SPECIAL INAUGURAL ISSUE

THE NEW REPUBLIC

Bush Isn't Legitimate
JONATHAN COHN

Yes, He Is
ANDREW SULLIVAN

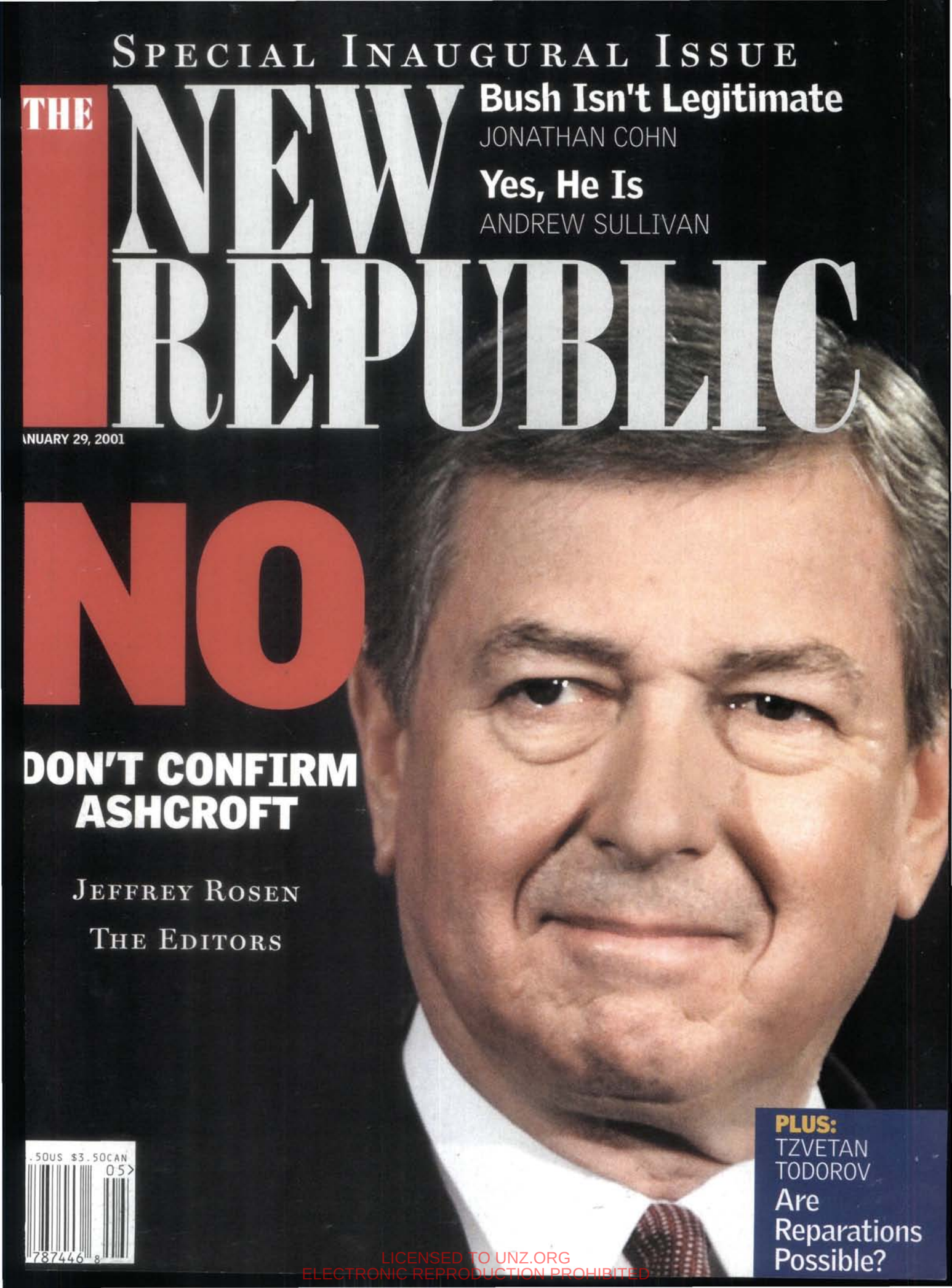
ANUARY 29, 2001

NO

DON'T CONFIRM ASHCROFT

JEFFREY ROSEN

THE EDITORS



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Where We Stand

A commentary on public education and other critical issues

Promises to Keep

By SANDRA FELDMAN, President
American Federation of Teachers

In a little over a month's time, the presidential race has finally been decided, a new Congress has been sworn in, and President-elect Bush has named his cabinet, including Rod Paige, his nominee for Secretary of Education. And as we celebrate Dr. Martin Luther King's birthday and prepare to inaugurate a new president, it seems a good time to reflect on the basic value Americans put on education.

During his campaign, President-elect Bush, adopting a motto long used by the Children's Defense Fund, promised to "leave no child behind." Rod Paige made the same commitment when his nomination was announced.

Most Americans share that value. This past November, state after state passed ballot initiatives that increased support for public education. In fact, in this country we believe so strongly in the necessity of education that taxpayers—parents and nonparents alike—pay to provide it for all children. And our laws require that all children attend school. That's because we recognize that education is not just something desirable for our own children. Unless all children are educated—the children who live on the other side of town as well as the kids next door—our communities, our economy, and our democracy will not flourish, or even survive.

There are now fifty million American children enrolled in K-12 classes, forty-five million—fully ninety percent—in public schools. Most of these children are in good schools—though even good schools can do better. But all too often, the children of poor families are subjected to what President-elect Bush has called "the soft bigotry of low expectations." He was talking about academic standards, but low expectations can manifest themselves in other aspects of education, like accepting the fact that poor children disproportionately bear the brunt of shortages of well-qualified teachers or attend crumbling schools.

We Have a Choice

As a society, we have a choice to make: We can give up on public education; we can give in to the "soft bigotry of low expectations" and continue to leave needy children behind; or we can commit ourselves to making sure that all children in our public schools receive the education that the world's greatest, wealthiest, and most powerful nation owes to each of them.

Voters agreed that no child should be "left behind."

To do the latter, we must first believe that all children can achieve; and we have to set high standards for them, for their teachers, and for their schools. But standards alone are not enough: Schools and the students and teachers who work in them also need the tools and conditions to meet those standards. Presumably, this is something on which most of us agree.

But let us also agree that children do not all learn at the same pace, that some come to school better prepared than others, and that the extra help a child might require should be available regardless of a family's ability to provide it.

Qualified teachers, a rich curriculum and up-to-date materials, decent buildings—these are all within reach in other advanced nations—so why not here? Throughout the country, urban districts like Houston are making great progress. Imagine how much more they could do for their students if they had more to give, and more access to what works.

A Moral Responsibility

Some people believe that free market forces can make these things happen. But markets create losers as well as winners. In education that would mean accepting that some children will lose out—and that brings us back to the soft bigotry of low expectations. A society advanced enough to assume the responsibility of compelling education must also assume the moral responsibility of ensuring that all students get an *excellent* education. And that is a role for the federal government. The November elections suggest that Americans are divided on many issues. But not on whether to support public schools and not on the quality of education we owe our children.

From my office window I can see the beautiful dome of the U.S. Capitol. It's a long way from the slums of Coney Island where I grew up. So I know the power of a good public education.

The elected officials who work in that stately building have it in their power to ensure that no child is left behind. Let's hope that in this new year, and in the spirit of Dr. King, they resolve to do no less. ▮

Where We Stand **is published once every month in *The New Republic*. To comment, write to Sandra Feldman, AFT, 555 New Jersey Ave. N.W., Washington, DC 20001.** **© Sandra Feldman 2001.** **Visit our web site (http://www.aft.org).**

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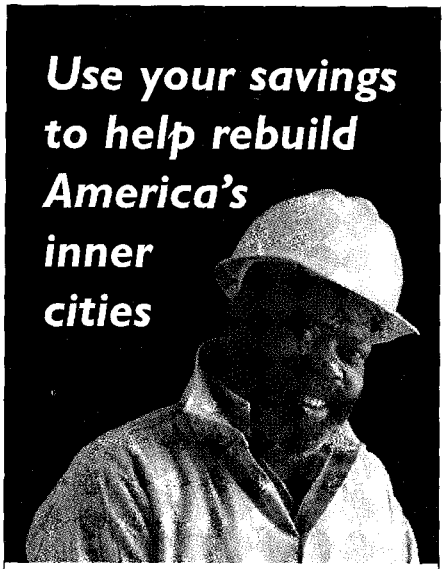

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Different choice

TO THE EDITORS:

John B. Judis claims that the Democrats' support for abortion has helped the party win female voters ("Sex Appeal," December 18). He writes that "what has drawn [women's] ire most is the Republican crusade to ban abortion."

How, then, does Judis explain the numerous polls showing that women are more likely than men to be pro-life? In an ABC poll that asked respondents whether they supported legal abortion, 56 percent of men answered yes, versus 50 percent of women. A 1998 Wirthlin poll found that 61 percent of women are pro-life, compared with 53 percent of men, and that women under 34 and over 55 are more likely to be pro-life than middle-aged women.

STUART BUCK
Fort Thomas, Kentucky

Voting business

TO THE EDITORS:

Katie Isenberg is dead right in her assessment of the real reasons why minority votes were disproportionately dismissed in Florida ("Poll Tax," December 18). However, the remedy she suggests—federal subsidies—is not the best alternative. How about outsourcing? Why couldn't a private entrepreneur rent state-of-the-art voting machines to local jurisdictions, market globally for a consistent revenue stream, and thus enable local governments to enjoy the benefits of better equipment without diverting capital away from things like roads and jails and Little League games?

KIP A. WEDEL
Mount Vernon, Iowa

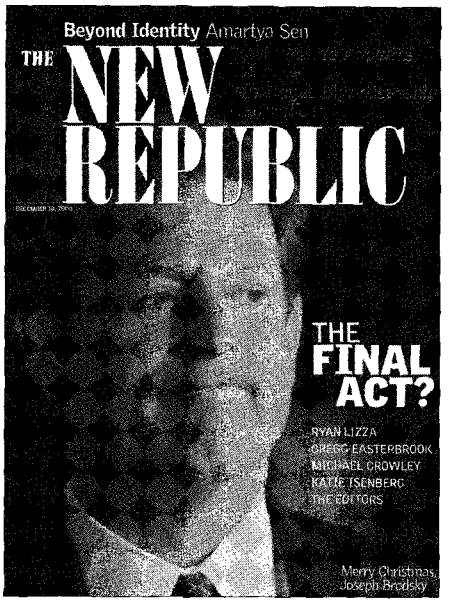
Misapplication

TO THE EDITORS:

Gregg Easterbrook's solution to the Seminole County absentee-ballot challenge is neither fair nor constitutional ("Absent Minded," December 18). For starters, it rests on the absurd assumption that a ballot application is equivalent to an "attempted vote." If Easterbrook really believes this, he should propose a statewide hunt for frustrated absentee-ballot applicants so we can turn all their "attempted votes" into the real thing. Limiting the process to Democrats and to Seminole and Martin Counties is as indefensible as Laurence Tribe's suggestion that Palm Beach County hold a reelection under rules permitting Al Gore's and Pat Buchanan's vote totals to increase, but not George W. Bush's.

And, while we're on the hunt for voter intent, why not also contact everyone who actually did submit an absentee ballot that was rejected for failing to meet one technical requirement or another? Unlike mere ballot applications, these ballots indisputably were "attempted votes." If Easterbrook can justify altering election results to reflect the intent of ballot applicants but not of real voters who turned in real ballots, he should share his rationale with THE NEW REPUBLIC's readers.

MICHAEL POLLARD
Via the Internet



GREGG EASTERBROOK REPLIES:

There would have been neither need nor rationale for the statewide applicant manhunt that Michael Pollard envisions by way of dismissing the Seminole and Martin County disputes. The point about those two counties is that Republican applicants were granted a special privilege to correct flawed ballot requests, while Democratic applicants were not. Correcting the Republican ballots should not upset anyone, since it helped people vote. The failure to extend the same opportunity to Democrats is where the wrong arose, and it cried out for the remedy of finding those who did not vote as a result. (Some Democrats who failed to receive absentee ballots may have said "Oh, fudge" and then voted at the polls; that could be determined from poll records.) As for Pollard's other point, I don't see how arguing that people who never received their ballots should have received them means that people who spoiled their ballots should get a second chance. In my article, I specifically rejected special pleading about the improperly marked Florida undervotes, writing, "A spoiled ballot is a spoiled ballot."

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TO THE MEMBERS OF THE UNITED STATES SENATE:

Each individual who has signed this statement makes his or her living in whole or in large part by following the United States Supreme Court and analyzing its decisions or teaching some other aspect of American law or jurisprudence. We are a diverse group, and the disagreements among us are deep and not likely to be resolved over the next many decades. But we agree on many things. Among them: (1) The rule of law matters; (2) The Attorney General of the United States is a position of great consequence and should be filled by an individual of great integrity and demonstrable relevant experience; (3) Senator John Ashcroft is very well qualified for the position of Attorney General and ought to be speedily confirmed by the U.S. Senate.

This is not a "close case" or a "difficult decision." If the rule of law in the United States is to stand apart from politics, then the confirmation of the principal law enforcement officer of the federal government must stand apart from politics as well.

Our nation's founders envisioned an important role for the Senate in the appointment of the top executive branch officials, but that role was never understood as a means to thwart the President's choice of key advisors solely because Senators of the opposing party disagreed with the policy positions of the President and his nominee. As Hamilton explained in Federalist No. 76, "It is not likely that [the Senate's] sanction would often be refused, where there were not special and strong reasons for the refusal. . . . It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to preventing the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity." Thomas Jefferson made the same point in April 1790, arguing that the role of the Senate was limited "to see that no unfit person be employed."

Now certainly one can hold policy views so inconsistent with our constitutional system of government as to render the person "unfit" to hold public office, but the Senate's primary role is to serve as a check on the President should he attempt to appoint someone of unfit character in the more common understanding of that phrase. Short of that -- and no one can credibly claim that Senator John Ashcroft is "unfit" for office on either count -- the President, as head of the executive branch, must be free to pick individuals of character and competence who can help him fulfill his constitutional obligation to see that the laws be faithfully executed. A Senate that would use the "advice and consent" power for other ends -- undermining the Presidency or otherwise furthering its own political agenda -- encroaches upon the executive branch, undermining the separation of powers rather than providing the constitutional check that our Founders envisioned.

Each one of us would gladly testify as to Senator Ashcroft's qualifications for the post for which he has been nominated. We urge the U.S. Senate to act rapidly to underscore what we know to be true: John Ashcroft is an individual who can be trusted to keep his oath to uphold and defend the Constitution and laws of the United States.

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Former Chair, U.S. Commission on Civil Rights
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TRB

FROM WASHINGTON

Right to Choose

I SUPPOSE I should no longer be shocked by conventional wisdom among many Democrats. But my naïveté continues. I was taken aback that they tried, for the first time in history, to overturn the result of a certified, recounted presidential election. I was amazed that they tried to do this by relying upon a method of vote-counting that had never previously been used in national politics—those cursed dimples—and upon a state court in Florida so intent on electing Al Gore that it actually helped defeat him. But little prepared me for the strategy now being deployed in the wake of Gore's narrow loss. It's now clear that, for many Democratic partisans, George W. Bush may get to take the oath of office, but he has no right to actually be president.

The usual suspects have come to the fore. Michael Sandel, the Harvard political theorist, argued in *The New York Times* last week that, "even setting aside the dispute over Florida, the fact that Mr. Bush lost the popular vote means he cannot claim a mandate for a conservative agenda, or for the appointment of ideological proponents who would carry it out." Hendrik Hertzberg, writing in *The New Yorker*, was blunter: "Because [the Senate] is evenly split . . . the Republican Party's control of it will be a function of the new Vice-President's ability to break ties—and therefore a function of the same judicial fiat that handed the White House to Bush." So, according to Hertzberg, the Senate should not merely vet but also propose judicial appointments and use its filibuster, if necessary, to get its way. Yale Law Professor Jack Balkin argued in the *Los Angeles Times* that "after ordinary elections, the Senate allows an incoming president his choice of Cabinet members. But this is not an ordinary election. . . . [E]ven if Bush was legally elected president, he lost the popular vote. Not only does he lack a mandate; he has a negative mandate. More voters opposed his policies than favored them." Sorry, W. You may have won, but you lost.

In this issue of THE NEW REPUBLIC, my colleague Jonathan Cohn goes even further. Not only must the bastard-president Bush defer to the Democrats on Cabinet appointments, he must also defer to them on legislative priorities. In defense of this innovative proposition, Cohn trots out handpicked polling numbers proving that the American people want the left-liberal agenda Gore offered them. So the electoral college is a minor matter—but polls count! One wonders why the Founders didn't think of that. To top it off, we have the outgoing president of the United States declaring publicly that his successor is illegitimate because Florida would have picked Gore if Republicans didn't "stop the voting." Not vote-counting, mind you. Voting. It was Bill Clinton's last memorable statement as president. And, boy, did he rise to the occasion.

Hence the early assault on Bush's Cabinet nominees, in particular former Missouri Senator John Ashcroft. To read the liberal press, you'd think nothing out of the ordinary was going on. Just advising and consenting, Your Honor. And, of course, the Senate has a constitutional right and duty to vet Cabinet appointees.

But it doesn't have the right to pick the Cabinet of its own preference, and it never has. Its tradition in this regard has always been deference. According to the Senate Historical Office, there have been 716 Cabinet nominations in American history (not counting W.'s), of which a mere nine have been rejected by the Senate and another nine withdrawn. Almost all of these failed nominations stemmed from intractable squabbles between a president and a Senate well into a presidency, or from scandal. Only one Cabinet nominee has been rejected in the first 60 days of a new president's term—John Tower, George Bush senior's pick for secretary of defense, in 1989—and he was a victim of personal smears designed to show he was unfit for the office.

The rejection for purely ideological reasons of a new president's pick for attorney general is without precedent. To reject Ashcroft before George W. Bush is even inaugurated would be a statement that he is not president the way every other president has been. Which is precisely why Democrats and their supporting interest groups are so hungry to do it.

The Republicans, of course, share some of the blame for the culture in which this is occurring. Their use of the legislature to derail dozens of Clinton's judicial appointments and lesser executive-branch picks gives them little credibility as defenders of executive prerogative today. When Clinton first took office, his 43 percent of the vote was used against him to undermine early executive decisions, such as an end to the ban on gays in the military, that were properly his to make. So I shed no tears for Ashcroft, an unsavory figure who made Borking a central part of his Senate career.

But I do shed tears for republican constitutionalism. The point of living in a republic, after all, is that we do not live by majority rule. We live by laws and a variety of institutions designed to check each other for the purpose of ensuring freedom. Those institutions can only succeed if they have autonomy and a free space in which to operate. What do I mean by a free space? The space to make executive decisions that are not constantly second-guessed, hemmed in, or controlled by the other branches of government.

Yes, such space is more constrained when making appointments to a third branch of government, such as the Supreme Court, or proposing legislation, which is Congress's to dispose of. Executive autonomy expands somewhat in foreign policy. But nowhere does a president deserve more space than in picking the people who work with and for him in his Cabinet. If a duly elected president doesn't have that right, it's hard to know what authority he has at all.

And if he doesn't have that authority, it's hard to see how he can be fairly held accountable when he faces reelection. In four years' time, he can always say, "Hey, don't blame me, I didn't get the attorney general I wanted." And he'd have a point. Under the pretext of advancing democracy, in short, the usurpation of executive prerogative actually undermines it, because it undermines presidential accountability. So let the new president choose whomever he wants. And then let the people judge in two and four years' time what they think of his choices. That's how it has worked for a couple of centuries. Why change it now?

Or, to put it another way: "No one can recall that the Senate ever rejected a Cabinet selection by the President. It is universally conceded the Executive has the right to select his own official family, and their submission to the Senate is merely a form. If it were not for this unbroken and accepted tradition neither one of these . . . choices would be confirmed. No one doubts that." That's my left-wing predecessor as TRB in 1925, dismissing objections to presidential picks that he found personally noxious. I reiterate his view this week, as a testament to the level to which liberalism has now sunk.

ANDREW SULLIVAN

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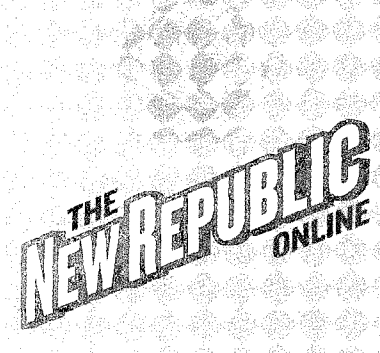

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No

FOR WEEKS, THE hoped-for silver bullet in the battle to slay John Ashcroft was a copy of the speech he gave two years ago at Bob Jones University. Ashcroft's opponents were desperate to discover what the man George W. Bush wants as his attorney general had told the faculty and students at the famously intolerant South Carolina school when it awarded him an honorary degree in 1999. So when word came late in the day on Friday—that special time in Washington reserved for the most damning revelations—that the Bush transition team, after much stonewalling, was set to release a transcript, Ashcroft's opponents were practically giddy with anticipation. But the speech contained nothing more than the former Missouri senator's usual litany of pious religious references, and his opponents were crestfallen. As one anonymous would-be Ashcroft slayer lamented in the next day's *New York Times*, "This, clearly, will not do it."

Maybe that's a good thing. We would love to see the Senate reject Ashcroft's nomination to be attorney general, but playing racial "gotcha" with sentence fragments dredged from obscure speeches is not the way to do it. The purpose of such exercises is to show that Ashcroft, behind closed doors, surrounded by his ideological brethren, is really a bigot. And, indeed, some of Ashcroft's opponents have already said as much. Maxine Waters, the lunatic congresswoman from Los Angeles, has branded Ashcroft a "racist." Former Missouri Representative William Clay has even likened Ashcroft's nomination to "the way that Ku Klux Klan members worked to improve race relations—they too reached out to blacks, with nooses and burning crosses."

These accusations are not just scurrilous; they're self-defeating. They set up a fruitless, and ultimately irrelevant, debate about whether Ashcroft, in his heart of hearts, dislikes black people. To counter the charges, all Ashcroft's supporters need to do is vouch for the purity of his personal views. And they have: Charles Polk, a black St. Louis attorney and friend of Ashcroft's, has come forward to proclaim that "there is not a racist bone in the man's body"; Bush himself has declared that Ashcroft has "a good heart."

To which the appropriate reply is: Who cares? The issue isn't what John Ashcroft feels deep inside, it's his two-decade record of public opposition to virtually every effort at achieving racial justice. The primary example, of course, is Ashcroft's shameful role in torpedoing the nomination of black Missouri Supreme Court Justice Ronnie White to the federal bench. As Stuart Taylor has argued in *National Journal*, Ashcroft blatantly misrepresented White's views on the death penalty. What's more, by branding a black judge "pro-criminal" and accusing him of "a tremendous bent toward criminal activity," he recklessly stoked racist feelings. Did he do so because he doesn't like black judges, or because White opposed him on abortion, or because demagoguing the nomination helped him in his Senate campaign against then-Missouri Governor Mel Carnahan? It doesn't matter; the outcome was the same.

And Ashcroft's awful public record on race predates the White nomination. As Missouri attorney general in the late '70s and early '80s, Ashcroft waged a legal battle against costly court-ordered desegregation plans for St. Louis and Kansas City public schools. He then capitalized on that opposition in his 1984 gubernatorial run, airing attack ads that targeted his Republican primary opponent for being insufficiently hostile to the desegregation efforts. As governor, Ashcroft twice vetoed laws designed to promote voter registration in predominantly black St. Louis. And in the Senate Ashcroft led the Republican effort to block Bill Lann Lee's nomination to be assistant attorney general for civil rights.

Sure, in any one of these instances, it's conceivable Ashcroft was right on the merits. But that's like saying Pat Buchanan is technically correct when he denounces Goldman Sachs for profiting from the Mexico bailout. It's not one position that matters, it's the totality. And time and time again Ashcroft, like Buchanan, has taken stands and framed them in ways that enable him to benefit from others' prejudice.

The Republican Party, so quick to jump on instances of bigotry against religious believers, is outraged that Democrats would even raise the issue of Ashcroft and race. Reading the conservative press, you'd think that, while black politicians are frequently animated by hostility toward whites, there is not a single prominent Republican whose record suggests hostility to the aspirations of blacks. Not Jesse Helms, not Strom Thurmond, not John Ashcroft. They're all simply adherents to the kind of color-blindness that motivated Martin Luther King Jr. before racialism corrupted the civil rights movement. And, what's more, they have scores of black friends. If political correctness degrades American race relations, surely so does this willful naïveté. The Ashcroft nomination would be a good time to call a halt to both. ■

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NOTEBOOK

CHARITY BEGINS AT HOME: Linda Chavez's now-legendary press conference withdrawing her nomination for labor secretary convinced a good many pundits (at least on the right) that she acted toward Marta Mercado not as a dishonest employer but as a "good Samaritan." The ever-subtle *Wall Street Journal* editorial page even put those words under Chavez's illustration. With cameras blaring, Chavez skillfully shepherded five immigrants to the microphone to testify to her generosity. And none was more stirring than Margarita Valladares, who had known Chavez the longest, "about twenty-three years." Nearing tears, Valladares recounted: "I was starting my life in this country, so she supported me in all the ways. She encouraged me to go to school. She encouraged me also to become a citizen. She also helped me to get my first job in the federal government." Valladares, however, neglected to mention another of the "ways" Chavez supported her—as a paid nanny. Valladares looked after Chavez's children and received a paycheck for her labor. As Chavez let slip in an interview on Fox News last week, Valladares "worked for me for many, many years." So, to bolster her contention that Mercado was a recipient of charity rather than a paid household employee, Chavez solicited the testimony of a paid household employee whom she presented as a recipient of charity. Defending her relationship with Mercado at the press conference, Chavez said defiantly, "I would do it in an instant without hesitation." Who knew she already had?

KING FOR A DAY: Asked at his January 17 confirmation hearing about his controversial statement at Bob Jones University—"We have no king but Jesus"—attorney general nominee John Ashcroft claimed the phrase was "a representation of what colonists were saying at the time of the American Revolution . . . and it became a bit of a rallying cry when people came to collect taxes on behalf of the king of England." Not exactly. Though the line may have been used by a smattering of colonists, it is best-known as the slogan of a radical religious sect of the seventeenth-century *English* Revolution, the Fifth Monarchy Men. The Fifth Monarchists took their name from the biblical prophecy in the Book of Daniel that four successive monarchies would precede the coming of an eternal kingdom. Like other millenarians of the time, they believed that, following the execution of Charles I in 1649, the Fifth Monarchy was nigh and that its king would be Jesus. "The Fifth Monarchists," writes B. S. Capp, the leading scholarly authority on the group, "were a political and religious sect expecting the imminent Kingdom of Christ on Earth, a theocratic regime in which the saints would establish a godly discipline over the unregenerate masses and prepare for the Second Coming." Which probably sounds less appealing to most Americans than the democratic government that followed our expulsion of the redcoats. In fact, in America, we have no king. Period.

FUZZY MATH WATCH CONT'D: Just two weeks ago, members of the Bush team were praising the Clinton administration's decision to increase its ten-year surplus projections by some $800 billion. "The latest set of estimates," said Bush spokesman Ari Fleischer, "reinforces how much room there is in the federal budget to cut taxes while securing other priorities." Well, easy come, easy go. This week, when the administration pointed out (correctly) that all but $1.6 trillion of the anticipated $5 trillion bonanza is tied up in essentially mandatory future spending, the Bushies decided they didn't like the old administration's numbers after all. "We will not be using these estimates," about-faced Fleischer. "We'll be using more updated, more

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accurate estimates." So, in order to pay for the president-elect's massive tax cut, the Bushies have begun searching for a surplus projection more to their liking. Or, to be precise, a budgeting principle more to their liking. And a top candidate, according to *The Washington Post*, is the bit of supply-side hocus-pocus known as "dynamic scoring"—the idea that tax cuts cause higher economic growth, so you should factor that growth into your surplus projections. Using this method, tax cuts almost pay for themselves, and that niggling affordability issue more or less evaporates. Unfortunately, if the last 20 years have taught one economic lesson, it's that any step away from fiscal discipline makes Wall Street jittery, which drives up long-term interest rates and undermines economic growth, which means less money coming into the government's coffers. The Bushies, of all people, should know this. After all, it was thanks to them that we learned that lesson in the first place.

GIMME FIVE: It's a rare day when an accountant turns down lucrative work. But when every single member of the "Big Five"—the elite group of accounting firms that includes PricewaterhouseCoopers, Ernst & Young, and Arthur Andersen—rejects potential business, it might be time to prepare for the apocalypse. Yet rejection is exactly what a consortium of news organizations encountered when they went hunting for a firm to conduct its own recount of the Florida vote. Why did all five say no? Perhaps because if Bush loses the recount on a firm's watch, it could endanger the goodwill that firm has worked so hard to build up. During Bush's presidential campaign, executives from three Big Five firms earned the rank of "pioneer," those cherished donors who raised more than $100,000 in contributions. Representatives from two firms served on Bush's White House transition team. A spokesman for one Big Fiver told *The New York Times* that "[w]e see very little value in another unofficial vote tally that in any case would not change the outcome of the election and at worst would only serve the cause of bitterness and acrimony." Bitterness and acrimony, one might ask, toward whom?

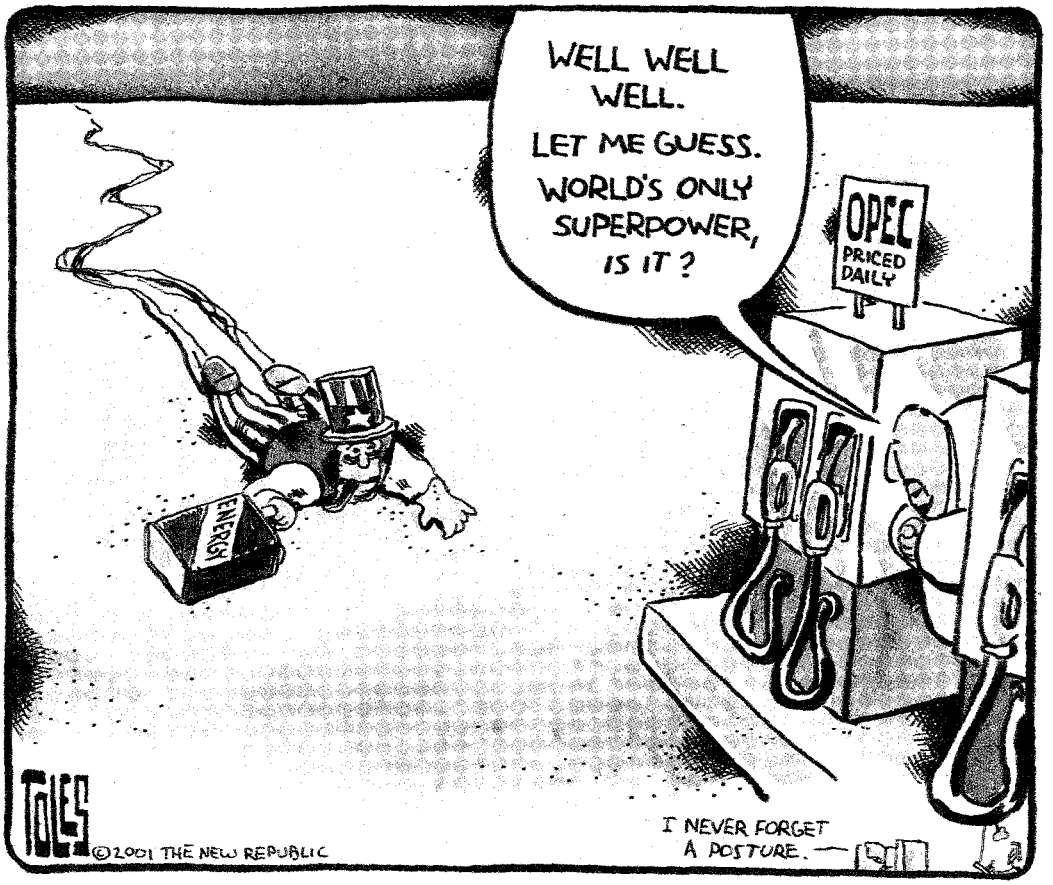
MEDIA CONSOLIDATION WATCH: "ASHCROFT PLEDGES TO ENFORCE LAWS THAT HE OPPOSES"—*The New York Times*, January 17

"ASHCROFT VOWS TO UPHOLD U.S. LAWS HE OPPOSES"—*The Washington Post*, same day

"ASHCROFT PLEDGES TO 'UPHOLD THE LAW'"—*The Washington Times*, same day

"ASHCROFT, UNDER FIRE, VOWS TO UPHOLD LAW"—*Los Angeles Times*, same day

ALL THAT JAZZ: We are pleased to announce two new features at THE NEW REPUBLIC ONLINE. The first is a weekly column by Jed Perl, TNR's art critic. In Art Notes, Perl will comment on new art books, shows in New York and around the country, and other developments in the art world, treating briefly the issues they raise and directing readers to relevant longer essays he has written for the magazine. Also new this week is a collection from the magazine's archives, "Hear Them Right: Otis Ferguson on Jazz." Ferguson, one of the most talented jazz critics of all time, flourished in the 1930s while a writer at TNR but died young and has since been overlooked. Over the next few weeks, his best jazz writing, along with commentary from jazz scholars Phil Schaap and Dan Morgenstern, will be presented at *www.thenewrepublic.com*. ■



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Gen X versus the new economy.

Fall to Grace

By Benjamin Soskis

In December 1999, when Ben Aune graduated from Georgia Tech, his career ambitions were relatively straightforward. "I was under the impression that you had to be in the new economy to be successful," he now admits. And who could blame him? The NASDAQ was rocketing through the stratosphere; dot-com millionaires were sprouting like spring flowers. So Aune went to work for MicroStrategy, a software company whose stock price tripled in the three months after he accepted its offer. But then came the bust. By the following August, the NASDAQ had fallen more than 1,000 points from its year high, MicroStrategy's stock price was one-fifth what it was at its peak, and the firm axed many of its latest hires, Aune included. Aune received offers from other high-tech companies, but, surveying a landscape littered with e-commerce wrecks, he instead accepted a position as a corporate recruiter for Waffle House, the Southern restaurant chain. Three months later, with the NASDAQ still stumbling, he says, "I haven't been this happy in a long time, in terms of lifestyle and in terms of the comfort level I have with my job." What's more, he says potential recruits are now much more amenable to his "sales pitch" about working in the old economy, "on the benefits of a solid company with consistent growth."

When the stock market began its precipitous decline last March, many cultural commentators gloated that Generation X's childish dreams of getting something for nothing were at long last meeting economic reality. "Experience is finally getting some revenge on youth," cheered *The Wall Street Journal*, noting that "stodgy old grown-ups" were once again in demand. "At some level, we didn't think 24-year-olds should have those kind[s] of bank accounts," University of Virginia Professor John Portmann told *Newsweek*. "Seeing rich, arrogant people brought down to earth is for many deeply satisfying."

But, amid its gleeful documentation of these tech-Icaruses getting their comeuppance, what the press has largely missed is that few are applauding their downfall more loudly than Gen X itself. It's not just that most twenty- to thirtysomethings aren't slacker entrepreneurs, casually skateboarding back and forth between their tech jobs and portfolio managers. Many found the dot-com hype downright oppressive. "When there is an apparent avenue to dramatic success that one isn't following or one isn't involved in," explains Boston College sociologist Paul Schervish, "there is this sense of having failed in choosing one's career." With the bursting of the dot-com bubble, some of that pressure is now alleviated. Or, as Gretchen Ramsey, a 30-year-old public relations executive in New Jersey, puts it: "It's a relief to know that my success and worth as a human being is not dependent on my ability to slap up a ... Web-based entity. I can abandon my scooter and be a wonder kid right here at my desk in good ol' corporate America."

When Silicon Valley was minting young millionaires by the thousands, that kind of professional serenity was almost impossible to sustain. And it wasn't just the money; old-economy Gen Xers were mocked for missing out on a cultural revolution. High-tech guru Tom Peters called the moment a "planetary economic, social, and political upheaval on a scale—and at a pace—unprecedented in human history." Amazon.com founder Jeff Bezos compared it to the dawning of the Cambrian era, when multicellular life first appeared on Earth. This techno-pundit blather found a receptive audience among a generation that lacked a defining event on the order of World War II or Vietnam. (A 1999 poll revealed that among 18- to 30-year-olds, the single most common defining experience was parents' divorce.) Having spent the early '90s maligned as cynical and undirected, Gen Xers had good reason to try to define themselves through the new economy. Of course, the lives of most of them bore little resemblance to the cyber-stereotype—according to the Employment Policy Foundation, less than 5 percent of 18- to 30-year-olds with a college degree are employed in computer-related industries—but, hey, it beat being associated with Winona Ryder flicks.

New-economy advertisers were quick to stoke this generational ideal. As Thomas Frank details in his withering critique of techno-capitalism, *One Market Under God*, advertisers privileged three images of American youth above all others—and all three reinforced Gen X's suspicion that its redemption could be found in the Internet. There was the young hipster, such as Stewart, the online brokerage Ameritrade's spokesman, whose "outré sideburns and elaborately cropped and dyed hair," according to Frank, "testified to his coolness"; the multiculturalist, suggested by the Cisco commercials featuring a multiracial assortment of young men and women, all ponderously demanding, "Are you ready?"; and the social revolutionary posited by the E*Trade annual report, which juxtaposed photos from the civil rights and women's rights movements of the 1960s and '70s with images of online traders.

As these associations took hold, they also began to color the apprehensions of the bulk of twentysomethings, who did not participate in the new economy. Anyone who didn't use Cisco's products or own its stock risked being perceived as square, reactionary, or undemocratic. "It was as if people were talking about a social movement when they talked about e-commerce and the Internet," recalls Phil Buchanan, a recent graduate of Harvard Business School. "You would literally hear people say, 'I have to go to Silicon Valley and be a part of this because I don't want to have to answer my grandchildren's "Where were you when everything changed?" and say I was working at some boring old-economy company in the Northeast.'" People like Buchanan who pursued more traditional business opportunities couldn't help but feel some insecurity about the paradigm not taken. "Maybe we were

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Breaking the Gridlock

avid Brady is a senior ow, Hoover Institution; owen H. and Janice ur McCoy Professor of olitical Science and Leadership Values, nford Graduate School of Business; and rofessor of political science, Stanford University.

For most of the past twenty years the federal government has been hampered by political gridlock, unable to accomplish significant political reform even when a single party has controlled both the White House and Congress. **What accounts for the political stalemate in Washington?** A variety of factors are at play.

In the United States, party positions on issues vary across the country. The Democratic Parties in Texas and California differ on gun control. Likewise there will be differences among local and state parties across the 435 congressional districts on affirmative action, tax policy, and many other issues. One reason that members of the same party vary on policy is that the influence of interest groups varies across regions and districts. Environmentalists are more numerous and influential in the West than in the East. The National Organization for Women is more influential in the North than the South. This sorting of conflicting American interests yields conservative Democrats and moderate Republicans who often vote against their party.

The views of voters themselves sort out in similar ways. For example, about 70 percent of Californians of both parties are pro-choice; thus former governor Pete Wilson was pro-choice even though the national party's position is pro-life. In short, one cannot use party control of government to predict policies.

In most cases, a simple majority is not all that is required to win a vote in Congress. The major supermajority provisions are the two-thirds vote required to override the president's veto and Senate filibuster, which requires sixty senators to move legislation. These rules enable members of Congress who are far from the middle ground on policy to exert influence on policy.

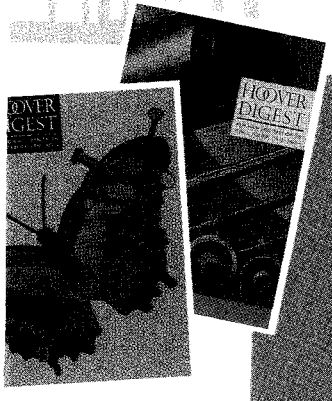
The varying strength of interest groups, regional differences in voters' views, the need to build supermajorities in Congress—all play a role in government inaction. But perhaps the most fundamental cause is that the issues are difficult and that neither the people nor their representatives know how to solve them. There has been a lack of consensus not only in Congress but also among the public.

The new president has a chance to break the long-standing gridlock. The Bush administration should begin working with Congress immediately on legislation addressing the two issues in which both parties share some common ground: ballot reform and education reform. Achieving some legislative success on these two issues in the new government's first 100 days would benefit both parties—and would do much to heal the wounds left by November's razor-thin election.

When the new president stands atop the Capitol steps on January 20, there's only one way out of the political morass: leadership. By creating a bipartisan atmosphere—at least temporarily—George W. Bush can still earn the popular mandate that proved so elusive on election night.

— David Brady

Paid for by the Hoover Institution, Stanford University.



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going to miss out on everything. Maybe this was a revolution," Buchanan remembers worrying. "When everybody else is heralding people as great innovators and leaders because [they started] company x-dot-com or y-dot-com ... you start to think, 'Well, what the hell am I doing?'" Those anxieties have been largely mollified by the dot-coms' return to earth. Now, says Buchanan, "there are folks who breathe a sigh of relief that the world isn't completely upside down. That working hard and moving your way up the learning curve ... will be rewarded too."

It wasn't just the business world. The same anxiety—and subsequent relief—was widespread at the nation's law schools, bastions of a meritocratic careerism that, for a moment, seemed in danger of obsolescence. As *L*, American Lawyer Media's magazine for law students, described the conundrum, "For a lot of young lawyers, the choice is simple: You can go to a law firm, do a lot of thankless work late into the night, keep your shoes polished, slowly climb the ladder, and, if you're lucky, make partner someday. Or you can go to a dot-com company as an in-house lawyer, wear sandals and T-shirts, do interesting work, turn up the music, and have a lot of fun—and, of course, get unbelievably rich when you cash in your stock options." "People were taunted for staying in law firms," says Matt Parlow, a first-year associate at Manatt, Phelps & Phillips in Los Angeles.

Post-bubble, however, the snickering has subsided. (For instance, San Francisco's largest firm, Brobeck, Phleger & Harrison, reports a 50 percent reduction in its associate attrition rate—attributable, the firm suggests, to the dot-com slump.) It's a relief to young lawyers such as Thad McBride, an associate at Arnold & Porter in Washington, D.C., who sees the legal profession as the apotheosis of "the Protestant work ethic"—"you work hard, pay your dues, and you'll eventually find success." To watch the dot-commers "have such spectacular success in such a short amount of time was unnerving," says McBride. The dot-com slump, by contrast, "restores my faith."

THE BURSTING OF THE NASDAQ bubble has verified traditional homilies not only about hard work but about cautious investing as well. And here, too, much of Gen X—including those who've seen their portfolios shrink—has experienced a quiet relief from the tyranny of inflated expectations. For a couple of years, the irrational exuberance of investors, combined with the proliferation of online brokerages and mutual funds, created the perception of greatly democratized stock market wealth. An E*Trade ad campaign in which a know-it-all yuppie encounters a bartender or tow-truck driver who turns out to be a stock billionaire made the point explicit—not only are the rich no different from you and me, they're not even different from the guys who serve our drinks and fix our cars.

The pressure to join the party was even stronger for twentysomethings, who were perceived not only as Generation Internet but also as Generation Invest. (Thomas Frank suggests this association is something of a propaganda coup for the Social Security-privatization lobby, since young America's obsession with stocks is often cited as a manifestation of its uneasiness about future government entitlements.) Again, advertisers reinforced the perception. Ameritrade's Stewart was just the tip of the iceberg: There was also the Forbes.com ad that depicted an insouciant, gloating punk with the caption "College quitting, credit card maxing, $23 million stock option owning retiree." And the Datek commercial in which a horde of young investors crashed through the glass of the stock exchange, sending shards flying onto the pin-striped traders below. In fact, a 1998 study by the Investment Company Institute found that the median age for an investor was 47 and the median stock holding for a Gen Xer was a mere $20,000—but these subtleties did little to undermine the popular sense that millions of young investors were getting fabulously rich. Those who weren't felt they were missing out not only on the easy profits but on a defining cultural experience. Investing became "like a chic thing to do, a cool thing to do," says business analyst David Jones.

The problem with the Internet investment mania, as with the Internet career mania, was the disjunction between generational ideal and generational reality. For every young investor whose paper worth suddenly surpassed her parents', there were far more who didn't invest or who found themselves making only modest gains. And, perhaps more than any other social attribute, wealth is comparative. "People's feelings and the intensity of their feelings are a function of those comparisons with reference groups, those they deem themselves similar to," says Boston College's Schervish. As the skyrocketing stock market broadened the class of "potentially rich" to include anyone with an Internet connection and a few bucks to spare, the relative economic satisfaction of everyone who wasn't experiencing a windfall inevitably decreased—especially among the Gen-X cohort to whom the wonders of the new economy were most aggressively marketed.

WHICH BRINGS ME to a personal disclosure. For years, I held out against the stock market boom, investing my money conservatively. But my will was weak, and so, last June, I bought a few high-tech blue chips. Three months later, the market plunged, and there I was, a stowaway on the *Titanic*. I don't belittle the loss of money. But there was something oddly consoling about sharing an experience with my peers, about—just this once—participating in an event that defined the moment. (At the very least, when they ask, I can tell my future grandchildren that I, too, had an E*Trade account.)

If I have taken some satisfaction in watching all those downward-pointing arrows day after day, it is not because I'm scornful of technology or mindlessly defending traditional values. My response was simply the psychological corollary to the principle that a slowdown can be healthy for an economy if it soothes inflationary pressures. So, too, a little gloating, even a little *Schadenfreude*, can be healthy for young workers if it makes the margins of the new economy begin to feel a little more commodious. Of course we appreciate the radical newness of our age. And of course we value the Internet. But we also don't mind being reminded once in a while that there are still job openings at Waffle House. ■

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The Dems abandon gun control.

Gun Shy

By NOAM SCHEIBER

IF YOU WERE a gun-control supporter last spring, life was sweet. Al Gore and Bill Bradley were climbing over each other trying to prove their devotion to the issue. After a rash of school shootings, President Clinton was taunting the National Rifle Association ("I'm just trying to keep more people alive"), and Democrats had practically shut down Capitol Hill in a push for meaningful gun legislation. GOP aides worried that the issue would hurt them in November, and even Dick Armey groused that "it's not a good discussion." When Smith and Wesson announced it would accept a sweeping set of voluntary safety regulations, the Republicans' fear was palpable.

Yet talk to Democratic politicians about gun control these days and what's palpable is the silence. Not long after the election, *The Washington Post* reported that "several lawmakers suggested that party leaders may be better off playing down their support for gun-control legislation," a sentiment echoed two days later in *The New York Times*. Conservative Democrats like Marion Berry of Arkansas confide that "[Dick] Gephardt has said [the leadership] is not going to whip us on [gun control] anymore." And even a reliable liberal like Barney Frank advises that there's not "going to be a major push on this [issue]."

How did gun control, a political winner just ten months ago, become such a liability today? It didn't; the evidence that gun control hurts the Democrats is very weak. And, in the coming years, gun control might actually help them considerably—assuming, that is, that they ever stop running away from it.

If there was a single moment when the conventional wisdom on gun control shifted, it was last July, on the eve of the Democratic National Convention. As Stan Greenberg, Gore's pollster, tells it, the Gore camp took a hard look at the electoral map and reached an unavoidable conclusion. "The entire target of communication was Pennsylvania, western Ohio, Michigan, Wisconsin, Iowa. That's the world Gore was trying to reach," Greenberg recalls. Since these areas were chock-full of gun-toting union members, Team Gore decided that gun control would hurt the vice president in the states he needed most.

After the election, the Gore campaign's hunch became Democratic gospel. Sure, Gore had won the Rust Belt battleground states, but the Democrats had lost their third straight bid to retake Congress—and many in the party believed gun control was to blame. In particular, they pointed to the election's regional skew. In famously anti-gun California, the Dems knocked off three incumbents. But throughout the rest of the country, they defeated only one. "Of all the issues," insists one senior Democratic congressman, gun control "had the greatest net [negative] effect."

Democrats don't deny that many voters support gun control; they just don't think those voters feel very strongly about it. Party strategists speak of an "intensity gap." "Guns are a motivating issue for a sizable number of voters on the right, but that's not matched elsewhere on the spectrum," laments Gore spokesman Doug Hattaway. "Unlike gay rights, environment, and choice," argues Barney Frank, "Democrats were disappointed when a pro-gun-control bloc did not appear." Gun control may have been useful in the early '90s, when crime rates were high, because it helped neutralize the Democrats' image as pro-criminal. But by the decade's end, with crime receding, the only people who still deemed guns a voting issue were those who owned them.

THE LOGIC SEEMS eminently reasonable. And it's mostly wrong. Start with the 2000 election. Yes, House Democrats did poorly outside California. But, with the possible exception of ex-Representative Scotty Baesler's Kentucky district, it's hard to find any evidence that the party's support for gun control hurt individual candidates. Promising Democratic candidates came up short in inner-city Louisville, suburban Chicago, and two urban Florida districts—hardly places where gun control hurts candidates' chances. Meanwhile, in Arkansas' fourth district and Utah's second, two places where gun control *does* hurt, the Dems now boast two new representatives—one, Utah's Jim Matheson, who actually favors tighter gun restrictions. Though Democrat Paul Perry failed to unseat John Hostettler in a competitive Indiana district, the Democratic challenger's anti-gun-control credentials were never in question. And most local observers believe that David Minge lost his seat in rural Minnesota not because he was deemed anti-gun but because of his opposition to Social Security privatization and George W. Bush's tax cut.

Cross over to the Senate side and gun control may actually have been an advantage. Challenger Maria Cantwell defeated longtime gun-control obstructionist Slade Gorton in Washington, while NRA lackey Bill McCollum went down in Florida. And even death didn't stop late Missouri Governor Mel Carnahan, also a gun-control supporter, from knocking off Second Amendment literalist John Ashcroft. Meanwhile, gun-show-loophole restrictions passed in Oregon and Colorado, two generally pro-gun states.

The intensity gap, it turns out, isn't as clear as many Democrats assume. A segment of the population does indeed vote on guns alone and can be mobilized by the mildest proposed restrictions. But those people—concentrated in the South and the interior West—tend to be deeply suspicious of federal power in general. From race to taxes to the environment, they detest the Democratic agenda, and they wouldn't vote for the party even if it abandoned gun control altogether.

For their part, the blue-collar, largely Midwestern swing voters Greenberg was worried about support the Second Amendment, but they don't consider it a religion. Generally supportive of government regulation of the economy, they must be reassured that Democrats aren't culturally hostile. That doesn't necessarily mean abandoning gun control (or, for that matter, abandoning abortion rights or affirmative

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action); it means framing it in a nonthreatening way. As Clinton domestic policy adviser Bruce Reed notes, it's possible to support gun control while respecting gun owners' values. That's what Clinton did so well. During his farewell tour last week, Clinton told a gathering of New York union leaders that, despite the state's strict gun-control laws, "nobody's missed a day in the woods in a hunting season; nobody's missed a single sports-shooting event." That kind of rhetoric, as much as the high crime rate, is why gun control benefited Clinton in 1992 and 1996—and why it could benefit Democrats again.

In fact, at the very moment the Democrats are running away from it, gun control as an issue is getting better and better. For one thing, crime is inching back up. For another, the administration late last year won significant new funding for gun-law enforcement. Deprived of its maddeningly effective "enforce the laws on the books" strategy, the NRA will find it increasingly difficult to argue that new gun-control restrictions don't help. "Last year they made a lot of noise about the alleged failure of law enforcement to go after gun criminals," says Reed. "I think we finally called them on that."

Look further down the road and you almost get cocky. That's because, as California State University Professor William Vizzard notes, the demographics of gun ownership are changing rapidly. Up until the mid-'60s, most gun owners were shooting enthusiasts—people who inherited an ethos of gun ownership from their parents and grandparents. But the baby-boomers' coming-of-age and a subsequent crime epidemic created a new breed of gun owner: consumers rather than "lifestyle" owners. Add to that a steady trend toward urbanization, and today the typical gun owner is as likely to be a middle-class suburbanite as a rural sportsman.

In other words, fewer and fewer gun owners feel a visceral attachment to their weapons. And more and more resemble the suburban swing voters for whom gun control, if packaged correctly, isn't terrifying at all. Too bad the leadership of the Democratic Party doesn't feel the same way. ■

The real Ashcroft threat.

Power to Judge

By JEFFREY ROSEN

THE PUBLIC OUTCRY against John Ashcroft's nomination to be attorney general has been remarkable not only for its ideological intensity but for its intellectual confusion. Whether they're women's groups on abortion, civil rights groups on race, or religious minorities on church-state separation, Ashcroft's opponents have largely been protesting the wrong thing. The former Missouri senator, they say, can't be trusted to enforce laws with which he disagrees—on abortion and civil rights, for example. But federal prosecutions, especially on issues of civil rights and liberties, are a small part of what the Justice Department does and an area where the attorney general ordinarily exerts little influence. Ashcroft's real power would lie not in his ability to enforce the law but in his ability to transform it: by filing briefs in the Supreme Court and recommending candidates for federal judgeships. Through the courts, he could pursue the conservative social agenda that has largely failed in the political branches.

Ashcroft's critics are alarmed about his enforcement priorities as the nation's chief prosecutor. But historically the ideology of the attorney general hasn't had much impact on prosecutions. According to David Burnham of the Transactional Records Access Clearinghouse, which collects data on federal trials, the Clinton administration's enforcement priorities closely followed those set in the Reagan and Bush years. Clinton, for instance, prosecuted an average of 134 civil rights violations per year, compared with 129 for the available Reagan years and 100 for the Bush years. These numbers are similar partly because most Justice Department prosecutions have nothing to do with the hot-button issues under discussion at Ashcroft's hearing. They largely have to do with drug crimes, which constituted more than one-third of all federal prosecutions between 1993 and 1998. In 1998, for example, there were only 146 civil rights prosecutions, compared with 30,014 narcotics-related cases and 14,616 involving immigration. And on drugs there's little partisan divide: Janet Reno supported federalizing the war on drugs, and Ashcroft would likely do the same.

The only area of federal prosecutions that sharply declined in the 1990s was guns. Referrals by the Bureau of Alcohol, Tobacco and Firearms for the prosecution of gun-law violations fell dramatically during the Clinton years, in the face of pressure from Congress after Waco. Ashcroft might well continue this trend. In general, however, individual prosecution decisions are made not by the attorney general but by local U.S. attorneys, who are appointed on the recommendation of senators from the president's party. So the hand-wringing about whether Ashcroft would enforce laws protecting abortion clinics is probably overblown: Only a handful of such attacks occur each year, and it would be hard to imagine Ashcroft overriding the decision of a local prosecutor and letting a highly publicized murderer get away with a slap on the wrist.

BUT IF RECENT years have revealed the attorney general's lack of influence over prosecutions, they have also revealed his or her vast power to change the general direction of legal policy. In the past year, for instance, Reno supported the constitutionality of campaign finance reform and affirmative action in public universities and decided not to intervene in *Bush* v. *Gore*. During the Reagan administration, Ed Meese's high-profile pornography commission, while failing to establish a connection between pornography and violence against women, helped stigmatize pornography in the general culture. Meese also transformed the federal judiciary by selecting judges who shared his strict constructionist ideology. In addition, he opposed *Miranda* and affirmative action and asked the Supreme Court to overturn *Roe* and the ban on school prayer. Although the Court narrowly rejected all these proposals, Ashcroft seems likely to resur-

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rect them. In conjunction with a like-minded solicitor general, Ashcroft could funnel the Court's conservative justices the cases they need to turn their narrow defeats into victories.

On school prayer, for example, the Court is narrowly balanced between three positions, none of which commands a clear majority. The strict separationists would strike down school vouchers and charitable choice; the proponents of religious neutrality would uphold them; and the religious supremacists would allow state-sponsored religious displays. Although Ashcroft may now claim he supports the neutrality position, his record shows that he is clearly a partisan of religious supremacy. In the Senate, he sponsored a resolution endorsing the posting of the Ten Commandments in an Alabama courthouse, despite a Supreme Court decision clearly holding that this would violate the Constitution. And he has repeatedly argued for prayer in schools. Last term, the Court rejected George W. Bush's request, as Texas governor, to authorize purportedly student-led prayer at a high school football game. If Ashcroft is confirmed, he might well ask the justices to revisit these questions.

On affirmative action, the lower courts are divided about whether racial preferences in the admissions policies of public universities violate the Constitution, and the Supreme Court may well be asked to resolve the issue. The Clinton administration recently filed briefs in lower courts supporting the constitutionality of these policies; Ashcroft almost certainly opposes them, having sponsored legislation in the Senate that would have prohibited preferences in federal contracting and employment. If the Court overturns *Bakke* and forbids affirmative action across the nation, it could transform the face of higher education.

On voting rights, Ashcroft vetoed a bill in Missouri that would have allowed the League of Women Voters to use the same procedures for registering voters in poor black neighborhoods that were already in place in white Republican suburbs. It will be interesting to see how Ashcroft reconciles this position with the Supreme Court's expansive vision of equal protection in *Bush* v. *Gore*, which arguably requires uniform registration and vote-counting procedures statewide. Ashcroft may have to decide whether *Bush* v. *Gore* requires the transformation of our decentralized electoral systems, as its logic suggests, or whether it was designed for the exclusive benefit of Bush. And his long-standing indifference to voting inequities may well come into play.

On abortion, Ashcroft promises to enforce the law—until he succeeds in transforming it. He has called for the overturning of *Roe* and has made clear his opposition to partial-birth abortion. The Supreme Court last spring, in an overly activist decision, struck down a Nebraska law that would have prohibited partial-birth abortion. If Congress passes another partial-birth law, Ashcroft will almost certainly defend its constitutionality, as he should. But, in a host of other areas, Ashcroft will have an opportunity to redirect national abortion policy in ways that could federalize the abortion debate. As the American Civil Liberties Union notes, he sponsored a human-life amendment to the Constitution that would outlaw abortion even in cases of rape and incest. In Missouri, he signed a law—later challenged in *Webster*—that declared that life begins at conception and that would have prohibited all abortions at public hospitals except those necessary to save a woman's life. As senator, Ashcroft voted for the Child Custody Protection Act, which would have made it a crime for family members to help teenagers cross state lines to have an abortion. Rather than seeking to return abortion regulation to the states, in other words, Ashcroft is determined to ban abortion across the nation. And he will have opportunities to pursue this agenda before the Supreme Court.

Ashcroft's record on privacy—an area in which liberal and conservative justices are increasingly converging—offers some rays of sunlight. He has displayed a principled libertarianism that has made him skeptical of much federal surveillance of the Internet. "He really was the champion in the Senate to revise the export control laws and to put pressure on the Clinton Justice Department and the FBI to back off the key recovery scheme," which would have given the government backdoor access to all encrypted documents, says Marc Rotenberg of the Electronic Privacy Information Center. The same sensibility led Ashcroft to oppose the FBI's Carnivore e-mail surveillance system and a proposal for a national identification card.

When it comes to Internet pornography, however, Ashcroft's civil libertarianism disappears. He vigorously supported the Communications Decency Act, which would have banned indecent communications, before the Supreme Court struck it down. And he supported Congress's decision last year to force libraries and schools to adopt Internet-filtering software as a condition of receiving federal funds. If new issues involving technology and pornography come before the Court, Ashcroft is likely to take a similarly hard line.

Ashcroft's power, in connection with the solicitor general, to determine the position of the United States before the Supreme Court is not the only danger. There are also judicial appointments, an area where Ashcroft's Senate career testifies to his extremism. Famously, of course, he distorted the record of Judge Ronnie White in the course of opposing his nomination to a federal court. But even more revealing are Ashcroft's votes against the most moderate and distinguished of Clinton's appellate nominees—including Merrick Garland and William Fletcher, now appellate judges in Washington, D.C., and California, respectively—on the grounds that they were extremists. Anyone who believes in good conscience that these pillars of moderation are outside the mainstream has a definition of mainstream that can be charitably described as exotic. The attorney general is not the only judge-picker, of course, but Bush's more moderate White House counsel, Alberto Gonzales, lacks Washington experience, and Ashcroft's strong views and dedication to the cause suggest that he would exert great influence.

The most common argument for Ashcroft's confirmation is that Cabinet nominees, unlike judges, serve at the

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president's discretion. An attorney general, the logic goes, is the president's agent, and therefore the president is entitled to appoint whomever he chooses. But if Republicans (most notably Ashcroft) really believed that, they wouldn't have opposed Lani Guinier or Bill Lann Lee. In fact, they were right to oppose those nominees as ideologically extreme, and Democrats are right to do the same today. The question for undecided Senate Democrats is not whether Ashcroft will enforce the laws on the books. It's whether they agree with the constitutional vision that now exists only in his imagination. ■

White House Watch

Spokesmen

By Ryan Lizza

Throughout last year's campaign, George W. Bush described the role of president as akin to that of a corporate CEO—part visionary, part manager, part talent scout. "My job is to set the agenda and tone and framework," Bush wrote in *A Charge to Keep*, "to lay out the principles by which we operate and make decisions, and then delegate much of the process to [staff members]." Sure enough, as Bush has picked his Cabinet nominees, what began as a campaign strategy to neutralize criticism of his inexperience has become his administration's governing theory. "I'm going to work with every Cabinet member to set a series of goals . . . for each area of our government," Bush told reporters at a recent press conference. "I hope the American people realize that a good executive is one that understands how to recruit people and how to delegate." A Bush adviser told *The New York Times* that the administration would be returning to the model of the 1950s: "Bush is going back to the Eisenhower-type cabinet, where it's more like a board of directors."

The message is clear: Bush will govern through his Cabinet. He rolled out its members at carefully orchestrated press conferences, while relegating most of his White House staff selections to mere press releases. And the media obliged, viewing Bush's Cabinet as the primary prism through which to gauge his administration's ideological, racial, and professional identity. Paul O'Neill and Tommy Thompson were front-page stories. Clay Johnson and Joshua Bolten were not.

Bush is following a well-worn path. "Cabinet government" has been a popular mantra for more than 30 years, especially among Republican presidents (perhaps enticed by its resemblance to a corporate board). Every president from Nixon to Reagan has embraced the concept of a robust, worldly Cabinet able to offer unfettered advice, set policy, and help steer the course of the administration. Unfortunately, each one also scrapped the idea almost immediately, for the simple reason that it doesn't work. In the modern presidency, power inevitably coalesces in the West Wing of the White House, among those advisers with immediate access to the president. And, rhetoric notwithstanding, there's every reason to believe it will be the same in the administration of George W. Bush.

Campaigning for president in 1968, Richard Nixon pledged that, if elected, he would dismantle Lyndon Johnson's all-powerful White House, which had been instrumental in designing the Great Society but disastrous in dealing with Vietnam. "Instead of taking all power to myself," he said, "I'd select Cabinet members who could do their jobs, and each of them would have the stature and the power to function effectively." At the first meeting of Nixon White House staffers after the election, future Chief of Staff Bob Haldeman declared, "Our job is not to do the work of government, but to get the work out to where it belongs—out to the departments." But Nixon quickly learned that, far from devolving decision-making to the departments, this arrangement constantly placed him at the center of trivial disputes among strong-minded Cabinet members. Well before Watergate, he vastly strengthened the authority of his chief of staff and learned to keep his Cabinet at arm's length. The subsequent scandals only increased his resolve to concentrate power in the West Wing; by the time he resigned, the White House resembled a fortress.

When Gerald Ford moved into the Oval Office, he was so wary of repeating Nixon's isolation that he didn't even appoint a chief of staff (Donald Rumsfeld was instead called "staff coordinator"). At Rumsfeld's urging, Ford promised to grant more power to Cabinet members and to ensure they had access to the president. Ford also wanted to spread out power within the White House according to a management model called "the spokes of the wheel." The idea was that Ford, the wheel's "hub," would delegate specific functions and authority to each of the nine "spokes." But neither innovation lasted long. According to Rumsfeld, the "spokes of the wheel" idea was never really implemented. As for the Cabinet, it initially met once a week, but the sessions soon degenerated into unfocused gabfests, and by the end of Ford's term it met at most once a month.

The concept of Cabinet government reached its zenith (and nadir) in the administration of Jimmy Carter. "There will never be an instance while I am president," he promised, "where the members of the White House staff dominate or act in a superior position to the members of our Cabinet." At the start of his administration, he gave so much leeway to his Cabinet members that when Joseph Califano, his secretary of health education and welfare, suggested a departmental appointee whom Carter considered unacceptable, Califano thanked the president for his "advice and counsel" and appointed his choice anyway.

In his first year in office, Carter held meandering Cabinet meetings (described by Attorney General Griffin Bell as "adult show-and-tell") every week, but gradually they were reduced to once a month and then to once every few months. Meanwhile, distrust between members of the Cabinet and West Wing advisers grew so strong that Carter lamented that he felt "like the referee between the Cabinet and the White House staff." Carter ended the experiment in 1979, replacing

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one-third of his unruly Cabinet and installing a dominant chief of staff, Hamilton Jordan, at the White House.

None of this dubious history deterred Ronald Reagan from riding into office with yet another promise to restore Cabinet government. Echoing Bush's current rationale, Reagan argued, "[Y]ou surround yourself with the best people you can find, delegate authority, and don't interfere as long as the overall policy that you've decided upon is being carried out." To this end, Reagan created a system of "Cabinet councils," groups of a few Cabinet members and White House staffers organized around certain issues. But in practice this system didn't devolve power to the departments at all; powerful staffers such as James Baker, Ed Meese, and Michael Deaver used the councils to keep the Cabinet secretaries under White House control. Over time, the number of Cabinet councils was reduced from seven to three; they were ultimately eclipsed altogether by a policy body called "the legislative strategy group," which was run by Baker and summoned Cabinet secretaries for advice only when necessary.

INDEED, THERE'S PLENTY of evidence that, for all the Bush team's talk of Cabinet government, they have little intention of implementing it. Unlike his father, who appointed what has been called "a Cabinet of friends" (including James Baker as secretary of state, Robert Mosbacher as commerce secretary, and Nicholas Brady as treasury secretary), W. has close relationships with virtually none (Commerce Secretary-designate Don Evans is a notable exception) of his appointees. He declined to appoint longtime cronies and largely passed over the GOP governors—Tom Ridge of Pennsylvania, Frank Keating of Oklahoma, and Marc Racicot of Montana—who helped propel him to the presidency. It is hard to imagine Bush, for whom loyalty and personal relationships are of paramount importance, feeling immediately comfortable in Cabinet meetings, surrounded by some 20 near-strangers all looking to him for guidance.

W.'s White House staff, by contrast, is populated almost entirely by Bush family loyalists. While the Cabinet, selected in large part on symbolic and political criteria, may defy easy summation, W.'s White House staff breaks cleanly into two categories: close associates from Texas and Washington insiders who worked for his father. Of 36 staffers announced before the inaugural, 18 previously served under George H.W. Bush (at least one has exactly the same job he held in the earlier Bush administration), and eleven worked for W. in Texas. Of the remaining seven staffers, four come directly from Bush's campaign. This staff, whiter and more politically moderate than the crazy quilt of the Cabinet, will really run the Bush administration.

While figures like Secretary of State-designate Colin Powell and Treasury Secretary-designate Paul O'Neill have dominated media attention during the transition, they will have less personal access to the president than West Wingers such as National Security Adviser Condoleezza Rice and Economic Policy Adviser Larry Lindsey. And, even more than in previous administrations, this access is likely to translate into political power. Bush is extremely comfortable with Lindsey, for example, who was chosen over other economists in part because of his ability to explain complex economic issues to Bush in simple terms. Lindsey has the further advantage of running the National Economic Council, the White House operation that coordinates economic policy with each department. (Robert Rubin's status and authority as Clinton's treasury secretary derived in no small part from a closeness with the president that developed while he was running the NEC.) Unlike O'Neill, who has a reputation as a deficit hawk (and actually promoted a fuel tax in 1992), Lindsey is a strongly ideological tax cutter. Bush's insistence on sticking to the $1.6 trillion tax cut he proposed during the campaign—even in the face of criticism within the GOP—is early evidence that Lindsey rather than O'Neill may be the administration's go-to guy on economic policy.

And while commentators have suggested Rice lacks the stature to go head-to-head with the likes of Powell and Defense Secretary-designate Rumsfeld, she will have a compensatory asset both men lack: an office in the West Wing. It bears remembering that close proximity to the Oval Office enabled Rice's predecessor, a theretofore obscure trade lawyer named Sandy Berger, to become by far the most important foreign policy player in the Clinton administration. And, while Rice bonded with Bush over the course of the campaign—teaching him most of what he knows about world affairs in the process—Bush has little personal history with Rumsfeld and Powell.

But the most important denizens of Bush's White House will be future Chief of Staff Andrew Card, senior adviser Karl Rove, counselor Karen Hughes, and Vice President Dick Cheney. Technically, all the White House staff will come under Card's authority. But in reality Hughes and Rove will each control three entire White House offices. Hughes will run the offices of the press secretary, communications, and speechwriting. Rove will be in charge of the offices of political affairs and public liaison, and the newly created office of strategic initiatives—whose mandate sounds suspiciously similar to Baker's successful legislative strategy group. As for Cheney, it is widely assumed he will have more say over policy than any previous vice president.

This setup, with Rove, Hughes, Card, and Cheney offering distinct power centers within the White House staff, resembles the structure recommended by former Reagan White House aide Michael Horowitz in a private memo to the Bush transition team. Horowitz argued that "the success of a modern-day Presidency depends on establishing in the White House loyal but separate, near-equal and at times even competing centers of power." Such a design, Horowitz wrote, helps "ensure a real 'oxygen supply' of ideas to the President, and to guarantee that he would not be restricted (either intentionally or inadvertently) to a single set of ideas, a single approach to an issue or issues, a single strategy of governance." Horowitz's memo was on the transition reading list, according to Bush personnel director Clay Johnson, and it comports closely with administration descriptions of the White House hierarchy—what press secretary Ari Fleischer calls a "flat management structure."

Critics also compare this structure to Ford's "spokes of the wheel" philosophy. If that's an accurate comparison, at least one member of the Bush inner circle will not be pleased. As

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Carter aide Mark Siegel recalled in an article about the 1976 transition:

> This diffusion of power organizational model had been tried before. I recall all too well meeting with Ford Chief of Staff (later Secretary of Defense) Dick Cheney in late December of 1976 in his White House office in one of the many regularly scheduled transition meetings between the Ford and Carter staffs.
>
> Cheney presented me with a gnarled, twisted bicycle wheel, the spokes crushed pathetically together. He said, only half-jokingly: "Here, tell the President-elect that this is what the 'spokes of the wheel' management looks like in action." ■

How Pakistan fell in love with the bomb.

Missile Defense

By MAHNAZ ISPAHANI

IN 1989, BENAZIR BHUTTO, Pakistan's prime minister and a heroine to many in the West, spoke at Harvard University's commencement. As a freely elected, Muslim, female leader, she said, she constituted a "living refutation" of the argument that Pakistan could not be a democracy.

Twelve years later, Bhutto lives in exile in London. Pakistan is ruled by the military and by a paradox. Domestically, the country boasts a resilient civil society capable of preserving elements of political liberalism and economic transparency despite the best efforts of Pakistan's rapacious politicians and religious extremists. And, in part because of its respect for that civil society, Pakistan's current military regime has not succumbed to the depredations that plagued many past civilian rulers. But it may be succumbing to its neighborhood. Pakistan's relations with its neighbors—its alliance with the Taliban in Afghanistan, its nuclear-tipped support of jihad against India in Kashmir—have strengthened strains of militarized fundamentalism inside the country that eat away at its capacity to revive democracy ever again. Pakistan is today a country whose domestic and foreign policies are at cross-purposes. And the resolution of that struggle may well answer the question Bhutto thought she answered ten years ago: whether any leader, civilian or military, can build a genuine democracy in this crucial corner of the Muslim world.

The man at the center of the struggle is General Pervez Musharraf, who took power in October 1999. He promptly suspended the constitution, set up a state of emergency, and shut down the elected assemblies. Still, for many Pakistanis at the time he was a pleasant surprise, a relief from high-handed and ineffectual civilian governments. And, indeed, Musharraf is not a dictator in the harshest sense. He has promised many of the right things: restoring the economy with Western support, calling the corrupt to account, devolving power—ultimately—away from himself to the grassroots, ensuring the rule of law, reducing religious sectarian violence, and dispensing justice speedily. He has promised to return power to democratic hands by 2003 through a much touted "devolution initiative," which began with a few local government elections held last month.

Musharraf appears to take economic reform seriously. Surrounded by a coterie of advisers formerly of Citibank, Bank of America, and the World Bank, the general declared that his mission would be to "document the economy," Pakistani parlance for figuring out the country's basic economic data. That would permit raising tax revenue (reportedly only about 1 percent of Pakistan's population pays taxes), liberalizing policies on trade and investment, and gaining the support of international creditors. And Musharraf's negotiations with the International Monetary Fund have procured a desperately needed financial package, though it will only tide the country over briefly.

Politically, Musharraf has tried to create a new polity without the national political parties, virtually all of which, he rightly says, are corrupt and avaricious. Instead, he has often relied on civic-minded organizations to implement his efforts to reach the country's poor, children, and women, who have some of the lowest literacy rates in the world. He praises the civic groups, encourages their participation in government, and has freed them from the harassment they suffered under the previous prime minister, Nawaz Sharif. As one human rights worker puts it, he is "co-opting them."

And Pakistan's voluntary organizations have begun to rise to the challenge. The country boasts world-class philanthropic initiatives—models of rural development, urban slum renewal, orphanages, and ambulance-service systems; a couple of unique private schools and universities; and human rights advocacy groups. Volunteerism is extremely high, and countless organizations focus on education (especially for girls), water, sanitation, and poverty. These quiet yet persistent groups are Pakistan's best hope to stem its greatest social crisis: rising poverty that is turning droves of unemployed youth into religious militants.

Contrary to the stereotype, in this Muslim society the momentum behind Pakistan's nongovernmental sector

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comes from a remarkable women's movement. Woman-led organizations are active in the protection of human rights, including the rights of non-Muslims accused of blasphemy. Many of these women were among the few Pakistanis to oppose earlier military dictators. And they work in a world where traditional and religious opposition to women conducting public lives is pervasive and sometimes deadly. Some men reportedly threatened to divorce wives who ran in last December's local elections.

To his credit, it is to such fragile people that the general has often turned, in a collaboration marked by awkwardness on both sides. It was no small matter when Musharraf last year condemned honor killings of sisters and daughters for "crimes" of dishonor, such as independently making the decision to marry. (The Human Rights Commission of Pakistan says that last year more than 1,000 honor killings were committed.) "Such actions," declared Musharraf, "do not find any place in our religion or law." The general also has authorized a National Commission on the Status of Women, and, for the first time in Pakistan, the December local elections saw 33 percent of seats set aside for women, as well as additional seats for the poor.

In his treatment of the press, Musharraf has also shown surprising tolerance, at least so far. And, like the country's women's groups, Pakistan's media testifies to a civic strength that could underpin a return to democracy. The Urdu-language press, it is true, is largely religious-nationalist and critical of government policy as too progressive. But, despite self-censorship, the small, gutsy English-language media is equally critical—from a secular, liberal point of view. In fact, even a quick comparative read of the Indian press and the Pakistani press shows far stronger dissent on foreign and security policy in the latter.

But, of the various pleasant surprises, none was more important than Musharraf's historic decision last December to permit an open critique of his own institution, the military. He ordered declassification of the most important document in the history of the army (revealed first in an Indian newsweekly last fall): a long-secret report that details the perfidious behavior of Pakistani soldiers and leaders in 1971, the year a bloody civil war dismembered Pakistan and created Bangladesh. "What happened then is nothing that any of us can be proud of," Musharraf told a U.N. audience last September. And although he said that "[a]s a Pakistani, I would like to forget 1971," he has done more to help Pakistanis come to terms with that awful period than have any of his civilian predecessors.

BUT IF MUSHARRAF'S domestic agenda offers reason for at least modest hope, his external agenda threatens to extinguish it altogether. Musharraf's regime—in particular its intelligence agencies, which have long suffocated, threatened, bought, and sold Pakistan's politicians—consider the Taliban, who run neighboring Afghanistan, to be "old friends." Many Taliban soldiers were trained in Pakistan's religious schools, or *madrassas*, and some have close ties to the country's religious parties. Never having won an election, these parties still intimidate even the soldiers: While all large political gatherings are banned, partisan religious organizations can convene and even raise guns in public. And embracing the ultra-orthodox Sunni regime across the border alienates other, far more valuable allies—the United States, for one, with which relations have deteriorated over Osama bin Laden and "blowback," a euphemism for the global spread of anti-Western Islamist terrorists trained (partly with U.S. funds) in Afghanistan. Pakistan's link to the Taliban also wins it no friends in the Central Asian states and makes potentially lucrative oil and gas pipelines (from Turkmenistan via Afghanistan to Pakistan or from Iran through Pakistan to India) unlikely.

Even with old allies, Pakistan's differences have grown. Iran, whose borderlands with Pakistan blend economically, is also upset about Musharraf's alliance with the Taliban and his government's treatment of Shia, a threatened minority in Pakistan. Beijing is jittery about the intermingling of Chinese Muslim dissidents from Xinjiang with the motley crew of fundamentalist Pakistanis, Taliban soldiers, and others in Afghanistan. And jihad is not only bad geopolitics, it's also dreadful economics. The people who dislike Musharraf's foreign policy the most are the ones his economic team is working hardest to please: Pakistan's international creditors.

FURTHER UNDERMINING PAKISTAN'S efforts at domestic reform is the stubborn problem of Kashmir. In this violent, disputed territory, where an insurrection against India has already cost an estimated 30,000 lives, mainly Kashmiri, Musharraf's regime supports (and denies supporting) the militant groups fighting for independence from India. Yet, like tails wagging the proverbial dog, these groups stoke Indo-Pakistani tensions and even potential war between Pakistan and India—a war that could now turn nuclear, giving resonance to Bill Clinton's description of South Asia as the "most dangerous place in the world." In fact, several analysts believe that in 1999, during the shadow conventional war in Kargil between the two countries, the conflict threatened to escalate to near-nuclear levels. And a nuclear arms race is as economically costly as jihad: Japan, Pakistan's most important bilateral donor of development aid, has yet to resume aid it cut off because of Pakistan's nuclear tests.

Whether the general's domestic agenda survives depends in large measure on his ability to shift his country's policy on Kashmir, which, however legitimate its historical basis and claim to justice, holds no benefits for the vast majority of Pakistanis today. Recently, Musharraf has taken some positive steps. In response to India's unilateral cease-fire in Kashmir, which began last November during the Muslim month of Ramadan, Pakistan has pulled back troops from the so-called Line of Control that separates forces. In January, the two non-speaking, nuclear-armed neighbors exchanged lists of nuclear facilities. The rapprochement may go further, particularly if the new U.S. administration continues to push for peace initiatives and abandons its apparent inclination to nonintervention.

Should conflict break out again, pulling back from the precipice would be harder than anyone realizes. In rallying support for its nuclear program, Pakistan's leaders have cre-

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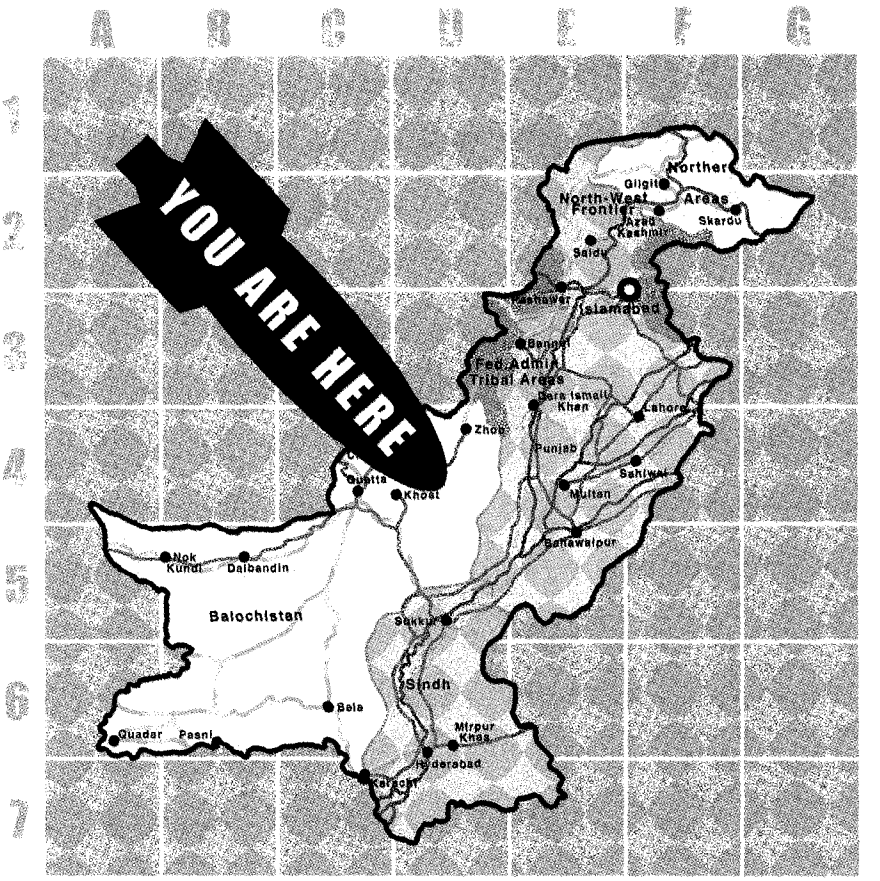
ated a popular cult of nuclear weapons that the Musharraf government has made no real effort to dampen and probably couldn't even if it wanted to. The new public architecture confirms the trend. Monuments from the 1970s that stand as sharp-edged, concrete admonitions to Unity, Faith, and Discipline, along with a blizzard of mosques and *madrassas*, have been succeeded by cheap copies of missiles, aircraft, submarines, and more missiles on sidewalks and in public squares in every major Pakistani city. The most disconcerting sight of all are the large kitsch replicas of the rocky Chagai Hills, flashing bright at night—the hills where Pakistan reciprocated India's five nuclear tests with six of its own in May 1998. Missiles now compete with minarets as the symbols of modern Pakistani identity.



And they compete for the identity of Pakistan's army as well. In the 1980s, the dictator-general Zia ul-Haq began Islamizing Pakistan's soldiers when, as Ronald Reagan's client, he had a well-funded army. Today, some generals are powerfully sympathetic to *jihadi* groups inside and outside the country. The war beyond Pakistan's borders parallels the war within Pakistan's borders, and in both cases it is a war against everything Musharraf needs to do to return Pakistan to economic health and civilian rule. In today's Pakistani military, many young soldiers with little experience of the West believe the Americans are anti-Pakistan, the Afghans are dear comrades, and the war for Kashmir's corpses is Pakistan's raison d'être.

So it was disturbing but not surprising when last week, right after the first local elections in Pakistan's long march back to democracy, Musharraf's ministers, under pressure from virulently anti-American religious parties, said Pakistan's legal system would be amended to include more *sharia*, Islamic law. More and more, the army and the intelligence agencies, buttressed by these religious parties (parties with no love of the general's more progressive policies), are bringing "jihad" into the common vocabulary of mosque, *madrassa*, and media. This near-meaningless term is seen as a fix for Pakistan's every problem. In reality, it makes the country an international pariah and prevents it from successfully marketing its exceptional tourism potential, since its spectacular peaks are packed with extremists. It gives courage to the fatwa-prone, illiterate mullah in the mosque, weakens Musharraf's crucial efforts to support women's rights, and scares capital from the country at the very time the government is desperately focused on encouraging it.

American foreign-policy makers rightly worry about Pakistan and India going to war and about Pakistan helping the Taliban shelter bin Laden from prosecution. What they worry about less is what can be done to reduce the debilitating effect these foreign entanglements are having within Pakistan, where a domestic agenda aimed at promoting liberal values is imperiled by a foreign policy that undermines them at home and abroad.

Therein lies the hidden value of America pursuing a multifaceted foreign policy that looks beyond the national security and anti-terror concerns that seem the central—perhaps only—focus of the Bush administration's likely policy toward South Asia. The United States and its allies need to help strengthen the frail peace, anti-poverty, education, human rights, and business groups that represent the only long-term solution to the rise of extremism in Pakistan. America must champion their rights to speech and assembly and place them at the center of its development assistance. And the United States must press for the cross-border economic cooperation and people-to-people dialogues that keep the hope of Indo-Pakistani peace alive.

Twelve years after Benazir Bhutto offered herself as evidence that democracy could take root in Pakistan, that remains not only an open question but an increasingly dangerous one. If Pakistan's military rule deteriorates into religious-nationalist dictatorship, or if Musharraf loses the support of his generals, thus fragmenting the military command, the chances of internal conflict and regional war increase. And, conversely, the closer Pakistan comes to such a war, the more likely brutal dictatorship, or chaotic military disunity, becomes. Today, the choice for any Pakistani leader may no longer be between genuine democracy and dictatorship but between dictatorship and survival. ■

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What W. deserves.

Loser Take All?

By JONATHAN COHN

EVERY FOUR YEARS, in early January, Congress convenes to ratify the vote of the electoral college and officially announce the next president of the United States. Most of the time, it is merely a formality. And, despite all the recent shenanigans in Florida, it was this year, too. Al Gore had gracefully conceded the race in December. On January 6, he was even present in the House chamber to certify the congressional tally that gave George W. Bush the presidency. And while a handful of Democrats, mostly African Americans, protested the awarding of Florida's 25 electoral votes to Bush—eventually staging a mini-walkout—they couldn't get a single senator to sign on, thus preventing formal consideration of their objection. At the end of the day, to the surprise of no one, Bush won the presidency once and for all.

Given the dubious circumstances of the 2000 election, you'd have thought Bush and his allies would have been pretty content with this result—maybe even a bit relieved. Instead, they were outraged. "What we have here is an attempt to rewrite election history to smear the Bush presidency as illegitimate," screamed the high priests of conservatism at the *Wall Street Journal* editorial page. They went on to warn that "if even a sizable minority can be persuaded that he won unfairly, his ability to govern will be severely compromised."

This was nothing new. For weeks, conservatives had been reacting with fury whenever anyone had the temerity to bring up the Florida recount or Bush's failure to win the popular vote. In December, after House Speaker Richard Gephardt refused to say on NBC's "Meet the Press" whether Bush would be the "legitimate" president, columnist Charles Krauthammer responded, "Under the rules and laws that govern the country, Bush won the election (three times, in fact). He does not need legitimacy conferred upon him by anyone, least of all from an opposition that does not wish him well." And when major newspapers announced their plans to push ahead with a hand recount of the Florida ballots, Republican lawmakers issued dark warnings of instability: "What the media's attempting to do, in my opinion, is undermine the legitimacy of this president-elect," said Florida Republican Mark Foley, "and it will make it more difficult for people to come to the final conclusion that he is the president."

Foley's formulation is helpful because it makes explicit the conflation that underlies the conservative complaints: that by questioning the legitimacy of Bush's victory, his critics are questioning his legal right to be president. This is, of course, nonsense. Nobody is trying to deny Bush his keys to the Oval Office. No one is saying his executive orders should lack legal force. Gephardt may have briefly hesitated to call Bush "legitimate" (he did so a few days later), but in the same interview he unequivocally acknowledged that Bush was the legal president-elect. And while the Congressional Black Caucus's January 6 protest ruffled feathers, keep in mind where and when that protest took place: in the House chamber, on the day Congress was charged with accepting the electoral votes. It was, in other words, the last remaining constitutional venue for challenging the presidential election. And, when it was exhausted, the members of the caucus dutifully—if ruefully—accepted the outcome.

In fact, it's not Democrats who are dwelling on Bush's legal right to be president; it's Republicans. And for good reason. Because, in the guise of defending his constitutional powers, they're actually trying to strengthen his political hand. "Mr. Bush's best bet is to be bold and act presidential," wrote Bruce Bartlett in *The Washington Times*. "He should govern as if he won an overwhelming majority, not by the skin of his teeth." It's shrewd advice: The more conservatives can paint Democrats as anti-Constitution insurrectionists for opposing Bush's agenda and appointees, the better chance Bush has of getting them through.

And there's reason to believe the strategy is working. The chattering class has largely endorsed the idea that Bush deserves whatever Cabinet nominees he wants, the circumstances of his election be damned. "The reality is that Republicans won the election," *USA Today*'s Susan Page said on CNN just this weekend. "[Bush] gets to nominate who he wants to nominate." Democratic lawmakers, meanwhile, seem resigned to giving Bush much of his legislative agenda. "Look," Gephardt told *The New York Times* this week, "we don't control any part of the Congress and we don't control the executive branch. Just by definition of things, we have to rethink everything we were out there on in the election, and think what our agenda should be now." Except among the most liberal of Democrats and journalists, the mere mention of W.'s unusual path to power has practically become taboo.

It shouldn't be. Given the means of his ascent, Bush is not a president like any other. He received fewer votes than his opponent and won the electoral vote based on a Florida tally that was, at best, incomplete and inconclusive. While he will assume the constitutional powers vested in the presidency on January 20, he has not earned the political deference that generally accompanies them. Legal authority and political authority are two very different things, and while the Supreme Court granted Bush the former, it did not give him the latter. Democrats in Congress should feel no obligation to

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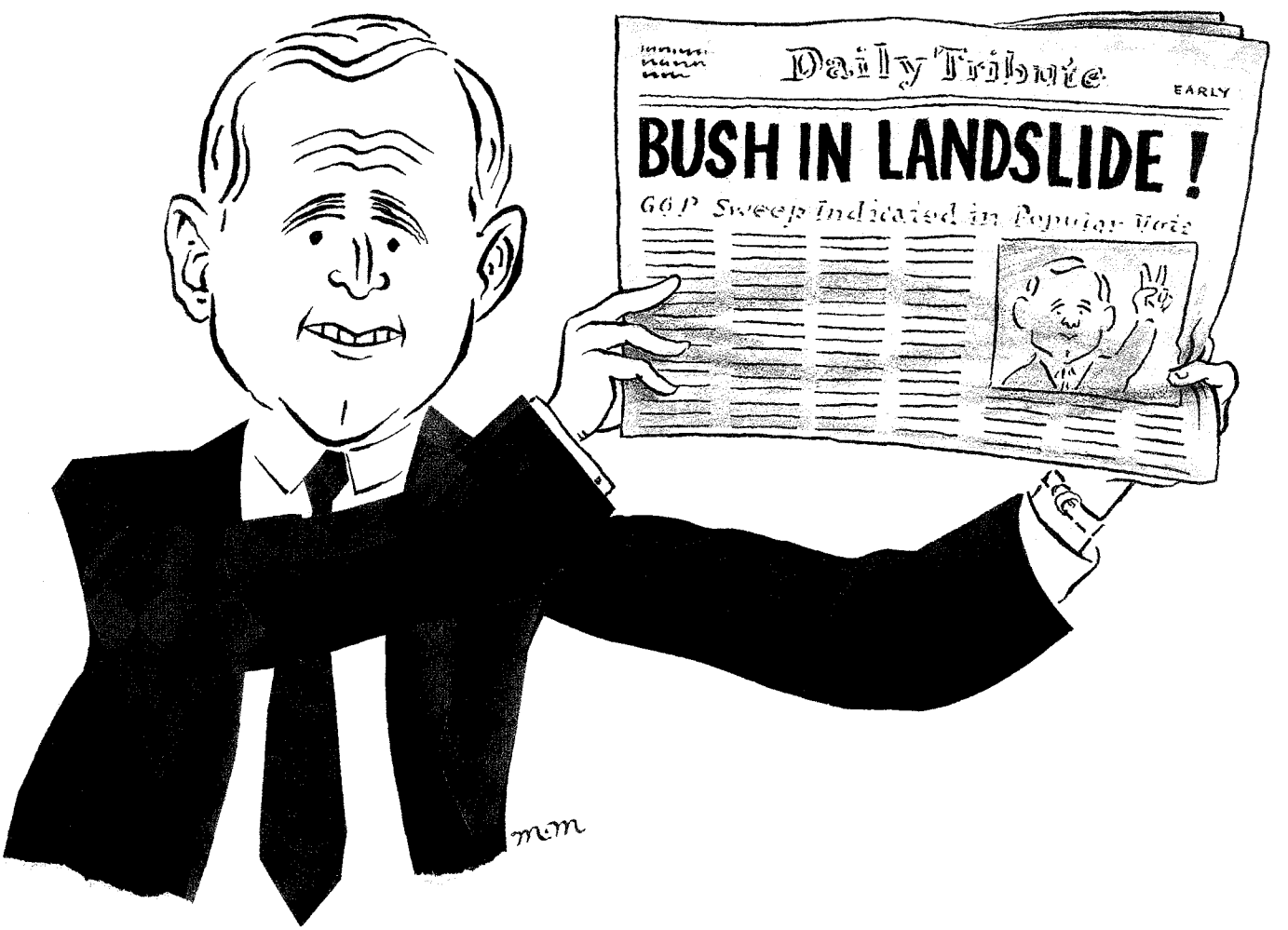
do so, either.

The first reason Bush has less political authority than his predecessors is the most obvious: In the national popular vote, he finished second, by more than 500,000 votes. The importance of this margin never really got the attention it deserves, in part because it grew from its initial Election Day estimate of 98,000 at the same time as the Florida controversy was hogging the headlines. To put it in context, Gore beat Bush by half a percentage point—or about three times John Kennedy's margin over Richard Nixon in 1960.

Bush partisans argue, correctly, that the electoral vote is the only legal arbiter of the presidency. But surely popular support helps determine what the president can do in office—after all, it's what gives him leverage over Congress. Just ask Bill Clinton. In 1992, Republicans insisted he lacked a mandate because he had garnered less than 50 percent of the popular vote, successfully using the argument to foil health care reform and other presidential initiatives. Bush allies insist their man has a greater mandate than Clinton did because he won more votes overall. But that's silly. In 1992, Ross Perot garnered 20 percent of the vote, by most estimates drawing about equally from Clinton and George Bush senior. And Clinton did, after all, get the most votes of any candidate, beating the elder Bush by a decisive 5 percent. In 2000, by contrast, George W. came in second, despite a leftist third-party run by Ralph Nader, which primarily took votes away from his opponent.

And then, of course, there's Florida. While it will be another few weeks before the media completes its recounts, it seems increasingly likely that those counts will show that Gore had enough votes to win the state. The most compelling evidence comes from the still-underpublicized recount in Lake County, a Republican bastion that used optical-scan voting machines. As this technology avoids the problems endemic to the older, punch-card machines (e.g., dimpled, hanging, pregnant, and perforated chads), no one expected the vote tallies of counties using it to change much upon manual inspection. Yet when *The Orlando Sentinel* examined Lake County's ballots, it discovered that several hundred voters had voted for a candidate both by filling in the bubble next to his name and by writing the candidate's name in the space reserved for write-in votes. These votes were never counted, as the computers deemed the ballots "overvotes"—i.e., votes for two separate candidates. But the voters' intent in these cases was entirely clear. And in just this one, heavily Republican county, Gore received an extra 376 votes, more than half the total he would have needed to win the state. (The best explanation for the discrepancy is what Mickey Kaus of kausfiles.com has called the "Sloppy Dem Thesis"—the idea that Democratic voters are more likely to misinterpret ballot instructions.)

Then there are Palm Beach and Duvall Counties, where confusing ballot layouts almost certainly led Gore voters either to vote twice or to accidentally vote for Pat Buchanan,



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costing Gore several thousand votes. Those problems were one reason a *Miami Herald* analysis determined that, had the election accurately reflected the sentiments of Florida voters on November 7, Gore would have carried the state by more than 20,000 votes.

As a matter of law, of course, the voting errors in Palm Beach and Duvall Counties don't matter. Popular intent is irrelevant; we abide by due process as determined, ultimately, by the Supreme Court. But in politics popular intent matters a lot. And, in determining W.'s mandate, it's worth looking at not only the popular vote and the controversy in Florida but even, heaven help us, the opinion polls. According to the Voter News Service exit poll, on nearly every major item of Bush's agenda, strong majorities indicated they disagreed with him. Just 28 percent of voters said tax cuts (Bush's plan) should be a priority for spending the federal budget surplus; 59 percent preferred retiring the national debt or shoring up Social Security (Gore's proposals). Large majorities also preferred Gore's positions on school vouchers, gun control, and prescription-drug benefits. Among the questions asked, the only issue on which Bush's position racked up a clear margin over Gore's was allowing people to invest Social Security money, 57 percent to 39 percent.

DOES ALL THIS mean Democrats should oppose every Bush appointee and initiative? Of course not. Eleven of Bush's 14 nominees are sailing through their confirmation hearings, and that's as it should be. Few Democrats are begrudging Bush the right to choose mostly conservatives, including an anti-abortion secretary of health and human services and a supporter of missile defense to head the Pentagon. The congressional Democrats are prepared to grant Bush most of what he wants in education and military spending and to go along with a much bigger tax cut than they would prefer.

But Democrats deserve some meaningful sign that Bush recognizes that the circumstances of his election demand that he compromise more than his predecessors. At first, Bush seemed to understand this, vowing that he'd put a Democrat in his Cabinet. But that concession turned out to be purely symbolic; appointing a Democratic secretary of transportation was a partisan concession that conceded no ideological substance whatsoever. And, in the last several weeks, the Bushies have made it clear that they will govern as if they had the popular mandate they so clearly lack—because that's the way to maximize their power. "[I]f you don't assert the sovereignty and legitimacy of your administration at the outset," one Bush adviser explained to *The Washington Post*, "you undermine your ability to achieve your goals later." So Bush is insisting upon his $1.6 trillion tax cut—even though some members of his own party have urged him to slow down. He nominated a labor secretary who opposes the minimum wage. And he put forward an attorney general who was, until his ouster this year, among the two or three most conservative members of the Senate—a man who opposes abortion rights even in cases of rape and incest and who fought an ambassadorial nominee because the nominee was openly gay.

If Bush continues to act this way—if he is determined to pretend he has the same political authority as every other president—Democrats have the right, even the obligation, to remind him that he doesn't. That means knocking down his most extreme appointees, even if most presidents lose nomination fights only in cases of scandal. It also means not always clearing the legislative deck so Congress considers only the president's agenda in its first several months. Republican leaders demand that Arizona Senator John McCain postpone campaign finance legislation because Bush, in the words of Senate Majority Whip Don Nickles, is "entitled to have his agenda." But a minority president like Bush deserves no such deference, particularly on an issue like campaign finance reform, where public sympathies clearly conflict with Bush's own predisposition.

WOULD SUCH TOUGH opposition render Bush a weak president? Maybe. But that's not always a bad thing. Surely Republicans didn't think so when, following their ascendance to the House majority in 1994, they announced their intention to set the national agenda, over Clinton's objections. As a general rule, the point of democratic government is to heed the will of the people. The best way to heed the will of the people after November's election would have been for Gore, who won the popular vote, to become president. But since under our electoral college system Bush gets to be president instead, the next best alternative is for Bush to fail to achieve those elements of his agenda on which he most clearly differs from Gore. There is a strong moral case to be made for obstructionism. Would most Americans prefer to leave Medicare alone for four years or to hand it off to for-profit HMOs, as Bush proposes to do? Would the economy be better off if the debt is paid down—which is what will happen if there's gridlock—or if Bush spends the surplus on tax cuts for the wealthy? Would the Justice Department and the courts more accurately reflect the moral tenor of the nation if they are filled with conservative ideologues or if such nominations are rebuffed and Bush is forced to appoint pragmatic centrists? In these and other cases, the people have already expressed a rather clear preference.

We do, in fact, have precedents for this sort of situation. In the nineteenth century, two presidents took office after finishing second in the popular vote. The first, John Quincy Adams, tried to govern as if he had a mandate to carry out his plans for the nation. He was met with robust opposition and resoundingly thrown out of office four years later—bested by Andrew Jackson, the man who had received the most votes in the previous race. The second, Rutherford B. Hayes, had more limited ambitions. Having come to office through a partisan battle not dissimilar from the one that took place this year, he trimmed his sails, concentrating on civil service reform and vowing not to seek a second term (a promise he fulfilled). He didn't go down in history as a great president. But, then, he didn't have the support to be one, and he made the most of the support he had. W. would be wise to follow Hayes's lead, but don't hold your breath. After all, his father is already calling him "Quincy." ■

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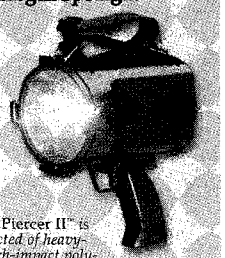

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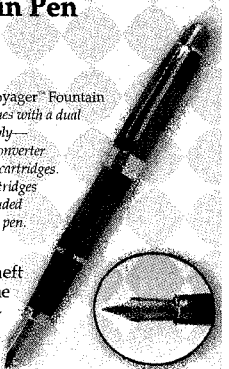

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Stanley Kauffmann on Films

Choices, Large and Small

IN THE PREFACE to *The Kennedy Tapes*, Ernest R. May and Philip D. Zelikow, the editors, say:

> Throughout the [Cuban missile] crisis, American decision-making was centered in the White House, and during much of the time, a tape recorder was running.... As records of frank deliberation in a time of crisis, these tapes have no parallel at any other time or place in history.

A portion of the tapes became available in 1983, and by 1997 all of them were generally released. Transcripts were poor. May and Zelikow recount the technical difficulties with the tapes that they had to overcome to produce their book.

This book is, inevitably, "a basis" for **Thirteen Days** (New Line) which is also centered in the White House. The film covers the period from October 16 to October 29, 1963, when a large portion of the American population and other populations were curious as to whether they were going to be obliterated. The subject has hardly been untouched, in television specials; nonetheless the film is as gripping—absolutely gripping—as if that subject were new. The director, Roger Donaldson, an Australian not previously noted for subtlety or even the sort of suspense that comes from intelligent tension, here focuses on a conviction of process, minute by minute, so that even though we viewers know the ending of the episode—after all, we weren't atomically obliterated—we are transfixed.

Donaldson easily cleared a high hurdle when he cast the roles of John F. and Robert Kennedy. Bruce Greenwood and Steven Culp look and sound enough like the originals so that we soon drop worries about impersonation and can concentrate on the performances, which, too, are not mere impersonations but real men with real troubles. *Thirteen Days* makes a hero of John and a lesser one of Robert. This seems to be justified. The input of presidential advisers was helpful: the advice of the military men was acknowledged as bitterly necessary. But for all that we know elsewhere and otherwise about JFK, the film, like the tapes themselves, supports a claim to his stature in this matter.

Kevin Costner, said to be a prime mover behind the making of this picture, plays Kenny O'Donnell, Kennedy's aide. (The screenplay gives him more than secondary importance.) I couldn't help wondering if Costner was trying to balance, for the film-history record, his participation in Oliver Stone's *JFK*. The record needs no balancing: *JFK* is about quintessences, *Thirteen Days* is about facts.

The exceptional Polish cinematographer, Andrzej Bartkowiak, uses the screen as if the camera were intensely curious. The screenwriter, David Self, condensed drastically, of course (the transcripts run over 700 pages), and has included a few matters that vary and underline the White House activities. But there are a few issues left to wonder about. First, why was JFK so surprised when he was shown photographs of the Soviet missile installations in Cuba? The CIA had warned him two months before that such moves were in progress. Second, the Soviet motives are unexplored. Khrushchev's statements about protecting Cuba were never believed: the best American guess—still a guess—is that the Soviet Union wanted a bargaining chip for controversies about Berlin. But, third, when Khrushchev came around to bargaining, he laid no stress on Berlin. He said that, like JFK, he, too, wanted peace, and, to end the crisis, he asked only that U.S. missiles be removed from Turkey.

Here followed the shrewdest move by JFK and advisers. The United States congratulated Khrushchev on his first point and completely ignored the second. Apparently JFK and Co. felt that, by the time he sent this message, Khrushchev had lost confidence in the whole project and had included the request about the Turkey missiles only to cover his retreat. After JFK ignored it, the USSR did not press the Turkey issue, and the whole crisis evaporated.

Real clarity about these matters could have filled out the film's action without slowing it. Still, *Thirteen Days* is like thinking about what could have happened in a serious car accident after you have survived it without a scratch.

David Mamet is loyal. To a fault. William H. Macy is an old friend from his Chicago days, and Rebecca Pidgeon is Mamet's wife: and neither of these actors deserves the roles, prominent ones, that Mamet keeps giving him or her, out of differing loyalties, I'd guess. It doesn't fit his level of talent to imagine that, objectively, he could really prize their abilities.

Mamet's latest film, **State and Main** (Fine Line), is a comedy about a film company's invasion of a New England town for some location shooting. The comedy is meant to arise from the abrasion of one set of values with another—or at least that's how it initially seems. The gap between the sets of values narrows.

Macy plays the director of the film, a fast-talking tyrannical brigand capable of quickly twisting operations and principles to fit conditions. Pidgeon is the local bookshop owner. Both actors work hard—he at breathing fire, she at rural simplicity. Alec Baldwin, a sometime talent, plays a satyromaniac leading man with a penchant for fourteen-year-old girls. Philip Seymour Hoffman, a true talent, exhibits another facet of his gifts as the screenwriter in the film, a playwright of individuality learning how to adjust to expediency. Various plot strands keep the action kerplunking along in a dramaturgy reminiscent of old Broadway manufacture. ("There's a sag here. Let's throw in a scene with a sexy blonde.")

Mamet's directing too aptly fits the structure, zip for zip's sake. His dialogue is even more unfortunately apt. It is not that *State and Main* ought to have been written and directed like *American Buffalo*, nor that Mamet ought to be restricted to one style. (His past work shows authentic variety.) The worry is that he chose this film's vein in what could be called a chase after pow.

But the worst disappointment is not in that mode, it is in the (updated) Norman Rockwell elements. Hoffman is asked to rewrite a scene in his screenplay untruthfully, to fit a new difficulty, and while he is thus wracked, he meets and falls in love with Pidgeon, who, in her quiet country way, knows all about virtue. Their story is Jimmy Stewart and Jean Arthur re-heated. And Mamet betrays even this conflict. Hoffman faces a certain

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test. He doesn't pass or fail it: it is simply dissolved.

That this white-doily romance should come from the man who wrote *The Water Engine* and *House of Games* and *Edmond* and *Glengarry Glen Ross*, among others, is a bit frightening. His last work was an adaptation of Rattigan's *The Winslow Boy*, an effective old-fashioned piece of theater in which we had to admire his skill in controlling such old-time machinery, so far from his time and tenor. But he has created *State and Main* from the start and in a factitious manner, with none of the fierce, caustic morality underlying so much of his work. One keynote of his mind has been his interest in deceit, his perceptions about the use of flimflam in modern life and in modern mouthings about life. *State and Main* is itself a deceit. ■

Tribunals, apologies, reparations, and the search for justice.

In Search of Lost Crime

By Tzvetan Todorov

I.

The end of World War II in Europe awakened hopes as great as the catastrophe that had just occurred. Once evil was defeated, it was believed, a better world would come to pass, in which everyone would have the same rights and enjoy the same freedoms, in which peace and prosperity would be the common lot. But disillusionment followed swiftly: not only had the devastation of the war condemned most of Europe to poverty, but the prevailing political structures did not have such happy outcomes. One of the victorious countries, the Soviet Union, imposed on a large part of the continent a repressive regime that hardly fell short of the Nazi dictatorship. As for the Western countries, they safeguarded the democratic order, but egotism, greed, and even cruelty continued to taint everyday existence within each one of them. The enormous suffering of the war seemed to some to have served almost no purpose, and the world appeared to carry on pretty much as before.

Profiting from the distance of half a century since that sobering period, we can say that in reality a change in public life did come about. There *did* occur a step (or several steps) in the direction of greater justice; and this positive conclusion withstands the many qualifications and restrictions that must be heaped upon it. The development in question concerns primarily the European continent, but it may serve also as an incentive elsewhere. As we might have expected, the change concerned words more than deeds, official declarations more than secret manipulations; but words, too, have a transforming power. The exceptions are numerous, and sometimes shocking; yet they are now perceived to prove a rule that conforms to the idea of justice.

One of the most visible forms of this transformation is the public condemnation of racism. This does not mean that racist attitudes have disappeared; but even the political movements of the extreme right, heirs to the openly racist parties of the interwar period, dare not proclaim this ideal publicly, and even they maintain at least an external adherence to the common credo of universal human rights. If we recall for a moment the public debates of one hundred years ago, we can measure how far we have come: in those days, a good number of the best minds of the time displayed a perfectly serene racism. Moreover, a parallel transformation has taken place in the role of women, who have become for the first time in history political subjects on an equal footing with men. And there is more. Public gestures are made today that are also without historical precedent: governments voluntarily acknowledge having acted badly in the past, and try to repair the damages for which they feel responsible.

These steps toward an ideal of justice are accompanied by a transformation of the narrative that we like to tell ourselves about our past. Of course, every community needs to present its past in the form of a story filled with moral judgments in which it plays a favorable role; but the form of these stories can diverge. Until the middle of the twentieth century, the narrative favored by the Western public attributed a heroic role to our own community: we were engaged in a great and

Tzvetan Todorov is the author, most recently, of *Voices from the Gulag* (Pennsylvania State University Press). This spring, Princeton University Press will publish *Fragility of Goodness: Why Bulgaria's Jews Survived the Holocaust.*

Stay the Hand of Vengeance: The Politics of War Crimes Tribunals
by Gary Jonathan Bass
(Princeton University Press, 368 pp., $29.95)

The Guilt of Nations: Restitution and Negotiating Historical Injustices
by Elazar Barkan
(W.W. Norton & Co., 464 pp., $29.95)

The Politics of Retribution in Europe: World War II and Its Aftermath
edited by Istvan Deak, Jan T. Gross, and Tony Judt
(Princeton University Press, 368 pp., $65)

For Humanity: Reflections of a War Crimes Investigator
by Richard J. Goldstone
(Yale University Press, 152 pp., $18.50)

Unspeakable Truths: Confronting State Terror and Atrocity
by Priscilla B. Hayner
(Routledge, 304 pp., $27.50)

Truth v. Justice: The Morality of Truth Commissions
edited by Robert I. Rotberg and Dennis Thompson
(Princeton University Press, 296 pp., $55)

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worthy struggle, and we triumphed over our adversary. But in recent decades there has been a change of paradigm, and the favorite story is now a melancholy tale in which we play the role of victim. The change is twofold: it is the vanquished, not the victor—the weak, not the strong—who are now valorized; and the one who has suffered most has the greatest claim on our sympathy.

Today the victory won has less prestige than the suffering endured. An example from recent French history can illustrate this moral and cultural transvaluation. In the aftermath of World War II, the greatest respect was paid to political deportees, to former resistance fighters: they had acted against the evil, and so they deserved our gratitude. The very existence of "racial" deportees, of surviving Jews, was often passed over in silence. Thirty years later, the situation is reversed. The former resistance fighters feel neglected, and attention is paid to the victims of anti-Semitic persecution, who were the objects of the supreme crime, the crime against humanity. They had committed no punishable acts. They were persecuted for what they were, not for what they did, and therefore the harm inflicted upon them was even greater.

This profound change is perhaps explained by the progressive consolidation of the democratic model. The heroic ideal, after all, is an aristocratic one: everyone knows that we are not all made of the stuff of heroes, so we are satisfied to admire them from afar, the way the British enjoy the splendor of the royal family. The role of victim, alas, is accessible to all, and we have no difficulty projecting ourselves into it. But the usurpation of the narrative of heroism by the narrative of victimhood testifies to a more positive development, too: to the reinforcement of the idea of justice among us. Who would lay claim to the status of the victim if he had no hope of seeing his suffering acknowledged, and of obtaining reparation? This evolution in the direction of a greater public decency is a sign that the modern period has turned its back on the Nietzschean precept: "The weak and ill-constituted shall perish: first principle of *our* philanthropy. And we shall help them to do so." We prefer instead to help the weak to survive, and to flourish; and we prefer to offer apologies and restitutions.

II.

THIS SLOW TRANSFORMATION of public life after World War II also explains the appearance of a new preoccupation: the repairing not only of present injustices, but also of the injustices of the past. This reparation has taken several forms, modified in turn by the historical and political context of each country; and the books that I am discussing here attempt to evaluate most of these attempts. It must be said at the outset, before entering into detail, that the picture is far from rosy. The means that are used to advance the cause of justice sometimes impede it, and the reparations chosen sometimes create problems no less serious than the problems that they were designed to solve. Still, the very existence of these attempts testifies to a timid progress in the idea of human rights—and in this terrible field, a small improvement is a big improvement.

Reparation for past injustice has been sought in three major ways. The first is in the law, in the judicial sphere, and it targets former criminals, with punishment meted out by a tribunal charged with judging the past. The second is oriented toward the public life of the community and uses the instruments of politics or culture to address the victims, providing them with symbolic or material compensation. The third is aimed at the community as a whole, with the goal of restoring the unity of a scarred society by establishing the truth about its past. The most notable among its means are commissions of inquiry, such as the Truth and Reconciliation Commission in South Africa; and its field of application is communal memory. These different interventions in the name of justice also seem to have their continents of predilection: continental Europe prefers legal redress; the Anglo-Saxon world, from North America to New Zealand, tends to opt for the compensation of victims; and Africa, Latin America, and parts of Asia favor commissions of inquiry. But these divisions are not exclusive.

THE SEARCH FOR justice has occurred both nationally and internationally. The end of World War II was followed by a number of trials, mostly in the European countries, as well as by punitive measures applied to various groups in the population. This led to "ethnic cleansings" of hitherto undocumented proportions: around fifteen million Germans were expelled from Eastern Europe, along with hundreds of thousands of Poles from Ukraine, Hungarians from Slovakia, Albanians from Greece, and so on. These different measures to repair a past injustice within each country are investigated by a variety of scholars in *The Politics of Retribution in Europe: World War II and Its Aftermath.*

There were many trials conducted during the period of "purification," and examining them today provokes mixed feelings. The general problem is sharply summed up by Tony Judt: "How do you punish tens of thousands, perhaps millions of people for activities that were approved, legalized and even encouraged by those in power?" The principle of justice is the application of the law—no crime without law, no punishment without law; but the law did not prohibit these outrageous acts. Should the political choices of the past be punished because they are no longer in force today? Should all the members of the fascist party in Italy be punished, when belonging to the party was obligatory for all civil servants?

Justice adapts itself to this challenge somewhat imperfectly. It begins by transgressing one of its major principles, by applying laws retroactively, and it proceeds by frequently contravening another of its sacred rules, that of individual responsibility. Political organizations and social institutions are declared outside the law; and so to have participated in them becomes a crime, even without one having done anything personally. But this multiplication of the guilty is moderated by a careful selection of those brought to justice. The situation lends itself well to the designation of expiatory criminals: the Germans were to blame, say collaborators in all the occupied countries; the Nazi leaders were to blame, say ordinary Germans. Bad reputation often counts more than acts actually committed; punishment is by example. One illustration of the relativity of such justice is found in the disparity of the sentences imposed for the same crimes, depending on when they were meted out: in 1945–1946, the death sentence was standard; but two years later, culprits got away with purely formal condemnations.

These reparatory trials were certainly imperfect—but they also seemed to be necessary. They performed a function other than the operation of justice, a function better described by religious or medical metaphors than by legal or judicial terms: the purification and the sanitization of the social body. The majority of the population had participated in what appears now to be a mistake—more, a crime; and in order to free themselves of a vague feeling of guilt and to be able to live with a light heart, people need to practice a bloodletting, a purge, a ritual sacrifice, after which they could declare that they are clean and innocent. In the end, it was better for the institutions of justice to take on this work of expiation than to allow the exorcism of guilt to degenerate into mass violence and lynchings—even if what took place was not, strictly speaking, an operation of justice. And several years later the respective governments short-circuited justice in another way, by declaring that the most urgent priority was now social peace and social order, and establishing

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an amnesty or a statute of limitations, and even freeing those who had earlier been condemned. In each of these instances, justice was instrumentalized, and made subordinate to the immediate well-being of the community.

III.

And what of international justice? Gary Jonathan Bass's well-researched book is a fine introduction to this second judicial practice. Its subject is the prosecution of war crimes. Bass shows, for a start, that this form of justice was not invented at Nuremberg, as we generally believe. He traces the first hints of the practice in the aftermath of Napoleon's defeat at Waterloo, and then he analyzes some trials that ended badly: at Constantinople in 1919, where the Turks were held responsible for the Armenian genocide (it was on this occasion that the expression "crime against humanity" was coined); and at Leipzig in 1921, where the Germans, beginning with Kaiser Wilhelm II, were held responsible for World War I.

Finally Bass examines the more recent and more familiar case of Nuremberg, and also of the international tribunal at The Hague, where judgment is currently being brought against the political and military leaders responsible for the break-up of Yugoslavia and the horrors that were perpetrated in its wake. Bass is an ardent advocate of this type of trial, though he exposes its many weaknesses. His arguments are not entirely convincing. He claims that this instrument of justice, imperfect as it is, is preferable to the vengeance of individuals, which is true; but surely these two forms of intervention do not exhaust the field of moral and legal possibilities. He also argues that only liberal regimes have practiced this form of justice, and deduces the virtue of this practice from that fact. But his deduction assumes that everything that liberal regimes do is good, which is an arguable assumption. Surely we can enthusiastically support liberal governments but still be critical of some of their political choices.

The judicial condemnation of the German political and military leaders at the end of World War I is, in this respect, rather disturbing. With the distance of eighty years, it is not at all clear that the German government and the German army were more culpable than their French counterparts; the only significant difference was that the French won the war and the Germans lost it. But the French, the British, and the Belgian governments insisted on adding a legal defeat to a military defeat. In doing so, they revealed that the great principles of justice could be merely a camouflage for a politics of self-interest. Not completely convinced that the effort was worth the price, the Allies abandoned the prosecution several years later. The Leipzig trial was a fiasco.

But the story of this attempt offers a few useful lessons. Lloyd George, the British prime minister, claimed that "war itself is a crime against humanity," and at a meeting of the Imperial War Cabinet the attorney general held the Kaiser "personally responsible for the death of millions of young men." They demonstrated by these statements that they subscribed to a naïve and potentially dangerous utopianism, which hoped to cure humanity definitively of its ills, such as the practice of war, and sought to impute the responsibility for a world war to the will of a single individual. The Italian president Orlando boasted that the tribunal's approach "had nothing to do with interests," forgetting that not all interests are material, and that if a country seeks to appear as the incarnation of justice, that too is a form of political gratification. The French prime minister Clémenceau congratulated himself on the moral revolution that the tribunal represented, which did not prevent him from defending the presence of judges drawn exclusively from the victorious countries with the excuse that "all justice is relative." He added that he was not interested in punishing the Turks responsible for the death of Armenians because the French had not been their victims. And the American president Wilson saw himself as a reincarnation of Jesus equipped with the appropriate military means: "I am proposing a practical scheme to carry out His aims."

The results were rather negative. The Leipzig tribunal did not prevent future crimes. Quite the contrary, it provided nationalist Germans with a reason to fight again, and it compromised the idea of an impartial international organ of justice. Compared to Leipzig, the Nuremberg trials a quarter of a century later were a great success. But this was because circumstances had also changed. Unlike World War I, which was the result of a rivalry of great powers, World War II was actively initiated by only one of the parties involved, and so the guilt of Nazi Germany was much more obvious, much more real. Images of the concentration camps evoked unanimous moral condemnation.

Moreover, Germany was occupied and its leaders were imprisoned. The question that preceded Nuremberg was not: Should the Nazi leaders be punished or should they be freed? The question was, Should they be executed without a trial or should they be tried? Stalin leaned toward the first solution, and offered his services to eliminate 50,000 or 100,000: he had the experience. The American secretary of the treasury, Henry Morgenthau Jr., cruelly proposed to deport several million Germans to another part of the globe; the Turks did well with foreign populations, he recalled. Churchill and Roosevelt even entertained the possibility of castrating the male population of Germany. Only the stubborn legalism of Henry Stimpson, the Secretary of War, enabled the outcome of the Nuremberg tribunal, in which the accused were provided with counsel, and witnesses had to testify, and a defendant might even be acquitted.

The most troubling aspect of the Nuremberg trial is that the genocide of Jews and other populations—what we call crimes against humanity, and precisely what seems to us to have been the worthiest reason for establishing such an exceptional jurisdiction—played only a marginal role in the proceedings. The principal accusation against the Nazi leaders pointed in an entirely different direction: that they were guilty of having conducted a war of aggression. It is true, certainly, that World War II was unleashed by Germany's aggressive politics; but it is no less true that other great powers did not hesitate on other occasions to conduct wars of aggression themselves. As for the Soviet Union, in which millions were led to their death by a regime no less repressive than Hitler's, it shared Germany's aggressive policies for a time, occupying the eastern part of Poland while Hitler conquered the western part. For this reason, as Judith Shklar noted, it was "a project of doubtful value" to condemn someone legally for having conducted an unjust war. The presence of the Soviets at Nuremberg posed a problem in itself. Stalin was no less criminal than Hitler, the biggest difference being that the one won and the other lost.

Nuremberg, in its turn, condemned defendants who had not violated laws in force, and punished some for collective misdeeds. Still, the legal innovation of this trial seems justified, and the general effect of Nuremberg was positive. For there is something truly new in totalitarian crimes, in these state crimes that the old legal code had not envisaged; and the introduction of the notion of crimes against humanity into law was a way of remedying this lack. Today, we can no longer claim not to know that certain acts are criminal, whatever the laws of the country in which they were committed. The Nuremberg trial also contributed to the transformation of Germany into a democratic country, even if thirty years later a new generation needed to question the conduct of ordinary citizens in Hitler's Germany, and not only the conduct of its leaders.

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Nearly fifty years after Nuremberg, in February 1993, a new war crimes tribunal was instituted at The Hague, to judge those responsible for war crimes in Yugoslavia. Was the creation of this institution justified? The answer to this question is not at all self-evident. As Bass rightly recalls, this tribunal was not the result of a simple desire to see justice prevail. It resulted, rather, from the refusal of the Western powers to intervene in Bosnia militarily or even politically. Public opinion was aroused by the images of suffering regularly broadcast on television; and in order to ease the burden of conscience a little, the tribunal was established. The absence of political enthusiasm for the court hindered its efforts: it lacked the material means that it required, the Western governments refused to lend their soldiers for risky arrest operations, and reliable testimony was difficult to obtain in an ongoing conflict.

Nor did the tribunal's action during the Kosovo crisis garner unanimous support. Charging Milosevic and other Yugoslav leaders with crimes against civilians while the province was being bombed was a somewhat questionable enterprise. The tribunal, financed and sustained by the Western countries, accused the army of the West's enemy of war crimes. It cannot be said, then, that the conditions of impartial justice were respected. In bringing the charge, the prosecutor Louise Arbor gained the attention of the media, but she compromised the idea of justice by making it an auxiliary instrument for the pursuit of political and military ends.

The international tribunal, like other organizations of humanitarian aid, had the obligation not to allow itself to become entangled with the machinery of NATO. Organizations such as Amnesty International and Human Rights Watch were drawing attention to the violations of international law committed by NATO, but their appeals to the Tribunal fell on deaf ears. Acts that were described as "war crimes" when they were committed by Serbs were described as "collateral damage" when they were committed by the Western countries involved.

Current efforts to create an international criminal court are equally dubious. Richard Goldstone, the South African judge who worked at The Hague, has written a disappointing book, in which he tells us more about hotel rooms and restaurant menus than about his underlying philosophy of international justice. Goldstone says that "the unfortunate approach of the United States administration at the Rome conference" has been the major stumbling block to this project. The United States refuses to see one of its citizens charged by this Court without prior consent; in other words, it refuses to see an international institution take precedence over the decisions of its national government. (President Clinton recently signed the treaty, but nobody expects that it will be ratified by the Senate.) So international justice will not apply to the great powers, it will apply only to relatively weak countries; who will have to fear the reprisals of others. Once again, the idea of justice is damaged.

The American objection aside, we may still wonder if the project of a permanent international court of justice deserves to be defended. It is a noble and generous idea, to be sure; but to be effective such an institution of justice must have at its disposal a police force, and such a force would always be drawn from particular countries and therefore be subject to the orders of particular governments, which might demand that it be exempted from its shared obligations. (Barring, of course, the establishment of a universal state, of the sort dreamed of by totalitarian dictators in the first half of the century—an equally unattractive solution.) Moreover, this international court would be superior to national sovereignties, and so would replace the will of the people, who in a democracy elect their leaders, with the will of competent judges. After all, we can never know the will of humanity as a whole. Such a court, in other words, would replace a democratic principle with an aristocratic one. Would this be progress? I doubt it. The example of Nuremberg, positive as it is, should remain the exception that proves the rule.

IV.

The second great form of repairing past injustices is to concern ourselves mainly with the victims and no longer with the perpetrators. This sort of action is the subject of Elazar Barkan's book, which has the merit of putting together recent cases of restitution, all of them very different, in order to offer a broad vision of this approach. These cases divide themselves into two historical frameworks, one linked to the consequences of World War II, the other to decolonization.

The compensation offered to the victims is either symbolic or material. We should not underestimate the power of symbolism on the pretext that it does nothing for your bank account: this is, in fact, what the victims need most, spiritually and psychologically and socially; and material compensation itself is worth something not least because of the symbolic recognition that it brings. The victims want the evil and the injustice inflicted upon them to be acknowledged, so that they can reconstruct their identities; they need public sympathy that validates their awful experience in some way, and transforms the violence that they endured into an act that their society condemns. The gestures of acknowledgment can come from their former executioners or later representatives of the culpable state: Willy Brandt kneeling before the Warsaw ghetto monument in 1970, or Jacques Chirac publicly admitting in 1995 the implication of the French state in the roundup of Jews in the Vel d'Hiv in Paris in 1942. In 1998, during a tour of Africa, Bill Clinton admitted to the responsibility of the United States for the practice of slavery.

The first important case of material compensation offered to former victims was Germany's decision to pay reparations to Jewish families stripped of their possessions during the war, and later to the State of Israel—a decision that its leaders, headed by Adenauer, made freely, even if external pressures were not lacking. They judged that this was the necessary price that Germany had to pay to rejoin the family of nations; and those reparations have amounted to more than $60 billion. Another acknowledgment of historical misdeeds was made by the Congress of the United States in 1988, when it admitted that Americans of Japanese origin had suffered unduly from their internment in camps during World War II; and $1.6 billion has already been paid in damages to more than 80,000 individuals. American Indians living in the United States and Canada have been allowed to reclaim possession of lands from which they had been expelled in the nineteenth century, by force or by deceptive diplomacy. They have also acquired certain prerogatives that are materially advantageous but of a more doubtful symbolic value, such as the right to have casinos on their lands, a lucrative vice prohibited to most of the American population. Is this a sign that Native Americans, assumed to be morally superior, are not at risk of being corrupted? Or does it express the view that they are already depraved, and so they have nothing to lose?

This type of penance has a good chance of success today, at least in countries such as the United States and Canada, Australia and New Zealand. Needless to say, reparations are not exactly automatic: the victimized group must be well organized, already wealthy enough to pay good lawyers and effective lobbyists, and its demands must not be so excessive that they are impossible to satisfy. The paying states or institutions also find this sort of reparation to be in their favor, buying them an acknowledgment of

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their capacity to conduct themselves morally.

This evolution of public morality is new, and it, too, represents a reinforcement of the idea of justice. Yet it also raises problems that are not easily solved. For a start, there is the matter of what we mean by the past. History is very long, and it is not always clear how far back we can go to try to repair the atrocities of yesteryear. In our day, in several Eastern European countries, property lost under the Communist regime is being restored to its original owners. But which dispensation should be reestablished? The Hungarian peasants were deprived of their lands in 1950, in the interests of collectivization; but those lands had been given to them in 1945 by a government in which the Communists already participated. If one of the decisions was legitimate, why not the other? And the regime previous to that one was itself a dictatorship: should all its actions be considered legitimate? It would be best not to get lost in this retrospective exercise, but neither can we ignore the context in which the acts were committed that we would like to undo. That the Soviet army rounded up the artistic treasures it found in its path in Germany in 1945 seems inadmissible today; but if we remember that the German army in Russia was not satisfied with stealing Russian cultural monuments but insisted also on destroying them, we can understand that the Russians may have felt the need for immediate compensation.

These questions may be posed still more sharply with regard to the postcolonial world, insofar as the acts that we are trying to "undo" today are even more distant in time. To hear the demands formulated by groups speaking in the name of former victims, one often has the feeling of being forced into a time machine, in an attempt to erase history as it really unfolded, and to rewrite it in accord with our current moral principles. These attempts are all the more paradoxical in that they are often presented as validated before tribunals that are themselves products of this history, and often refer to a past that is more mythic than true. Was there an indigenous political space that the arrival of Columbus in 1492 destroyed, and should that space be restored today? Before the arrival of the whites in the Americas, were the Indians of America living in splendor—which contemporary society might be obliged to restore—or in squalor? With the lapse of one or two centuries, moreover, the identification of current representatives of the victims and the victimizers poses a problem. The practice of slavery was an evil, but why should the descendants of Irish and Italians who arrived in America at the beginning of the twentieth century pay reparations today? And to whom should they pay them? There was something futile and false about Clinton's gesture in Africa: he was asking to be pardoned for acts committed two centuries ago, for which he was in no way responsible, even as he was evading responsibility for his own misdeeds. Surely the principle of historical justice collides at some point with the principle of individual responsibility. To make reparations for an injustice toward a living person is a duty; but to do so toward an abstract entity is an action much less binding and much less clear.

We are familiar with the prickly question of the Parthenon marbles, brought to Great Britain by Lord Elgin at the beginning of the nineteenth century, and reclaimed today by the Greek government so that they might be reinstalled in their original place. If such a principle of restitution were adopted, and each country were given back its original possessions, the museums of the Western world would be half-emptied. This would not be a tragedy in itself, but it would mean validating one moment of the past as the only authentic one, and casting the other events of history aside with the judgment that they should not have happened. The demand for reparations is often as much an abolition of history as it is a recognition of history. It is often as much an expression of illusion as of knowledge.

Another question concerns how much of an individual's legitimate property deserves to be restored or protected. The demand of Native Americans to retrieve the lands that had been taken from them by governmental agencies in the recent past has a clear and precise meaning—but this is not the case when the property in question concerns their traditions, their religion, or the bones of their distant ancestors. A conflict has arisen in recent years between the Indians of today, who insist that they are the exclusive heirs of their grandfathers' wisdom, and the New Agers who also want direct access to it. Should we prohibit these neophytes from using eagle feathers, from imitating religious rituals such as the sweat lodge and popular decorations such as the dream catcher? The theft of land and wealth may be made good; but we may well wonder whether spiritual works should not more properly be the heritage of humanity, rather than being held under the tribal copyright of their creators' distant descendants. Can we imagine a similar prohibition on the traditions of Buddhists, Muslims, or Christians? We may be shocked to learn that an Internet site offers to everybody "A Sweat Lodge Ceremony," but should we prohibit it?

In all of these conflicts, the rights of the individual clash with the rights of the

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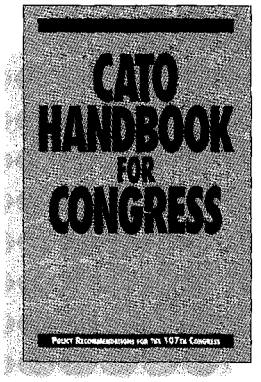

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group. In the somewhat distant past of colonized peoples, individuals had no say in the matter; they had to submit to the decisions of the group. But is it legitimate to reestablish such a situation today? Does a present-day descendant of the Sioux have the right to accept compensation for his stolen lands, and as a result renounce the Sioux's right to those lands? Does an individual artist have the right to adapt a traditional heritage to his purposes, or must he devote himself to preserving the tradition, under penalty of seeing himself accused of cultural genocide? Sometimes fidelity to history can also become a form of oppression. These demands to maintain or reestablish the past do not seem to take account of the fact that all living traditions change, and only dead cultures remain intact. The recent promotion of the rights of groups is not necessarily progress: an individual has the right to practice the culture of his choice, to participate in this group rather than that one—but he also has the right to free himself from the pressure of any group.

FINALLY, ONE HESITATES to endorse a permanent identification with victimhood. Our world, which wallows in the sentimental and craves the spectacular, grants a privileged place to suffering. The protagonists in situations of conflict know this very well, and try to garner general sympathy by parading their wounds, sometimes going so far as to attack their own camp so that the damages will tip the balance of sympathy in their favor. But the suffering of a group does not prove that its cause is just; and compassion alone cannot take the place of policy. Communal life must be based not on the quantity of pain endured by this or that group of people, but on the equality of rights.

What is more, a person who sees himself exclusively as a victim often remains insensitive to his own responsibilities and to the sufferings that he himself might cause. He is happy to wait for justice to be done. "Victimization empowers," as Barkan remarks; and there are many who would profit from this power. This sometimes degenerates into a competition in wretchedness. Thus some American Jews deny that Japanese-Americans interned during the war should use the expression "concentration camps" and contest the Armenian-Americans' right to speak of "genocide."

To acknowledge one's own mistakes or weaknesses enables one to become involved in a personal challenge and to bring about a moral transformation; but to claim the prerogatives of the victim adds nothing to our moral value. It simply serves our self-interest. Paradoxically, the positive contribution of the victim to the moral education of society consists in offering the perpetrator the occasion to make amends. From this point of view, the effects of restitution are ambiguous: "No restitution has lifted the burden of victimization, instead it has routinized it," Barkan concludes.

If we want to repair the injustices of the past, it is preferable to address the former victims rather than the former perpetrators. But this orientation itself must be qualified by certain warnings: that past evil must be recognized, but it is better not to identify most intensely and most permanently with the role of victim; that compensation is more appropriate for living individuals than for communities or institutions of the past; that we are better at repairing material losses than at repairing spiritual dispossessions.

V.

THIS BRINGS US to the third method of reparation, which seeks neither to punish the guilty nor to compensate the victims, but instead to permit an entire community to become reconciled with itself. This objective can be pursued, of course, by punishments and compensations, too; but it has also created certain activities and institutions specifically designed for this end: the commissions of inquiry charged with producing an image of the past that is acceptable to everyone. Priscilla Hayner's book presents a useful inventory of the work of twenty-one such commissions from all over the world; Robert Rotberg and Dennis Thompson's volume is a collection of essays devoted to the best known of these bodies, the Truth and Reconciliation Commission in South Africa.

In certain circumstances, punishing the guilty and compensating the victims seems impracticable—particularly in those highly charged situations in which it can be verified, after a radical change in political orientation, that a large part of the population participated in what now seems to be a crime, and an even larger number suffered from its consequences. This was the situation after the overthrow of the military dictatorships in Latin America, and of the regime of apartheid in South Africa, and of the Communist regimes of Eastern Europe. Sometimes it is not easy to distinguish between victims and perpetrators. Under a totalitarian regime, the majority of the population is at once the accomplice and the victim of the perpetrators. Since it is not possible to compensate all the victims or to punish all the guilty, and since the idea of a general amnesty, pure and simple, as if nothing happened, is equally inadmissible, the remaining solution, chosen by several countries, is to establish a commission of inquiry.

THE ONE IN South Africa identified its objectives as "Truth and Reconciliation." The commission candidly presented itself as an alternative to justice. It was also said that it represented a new form of justice, "restorative" justice as opposed to "retributive" justice. But it is not clear that anything was really gained by this terminological innovation. For the business of commissions is very different from the business of tribunals. Commissions have a goal, which is social peace, and reconciliation between different factions of the population; and they posit that a particular method will lead to social peace, namely the public establishment of the truth. Lastly, such commissions are prepared to pay the price that is required to achieve this result: that persons who have revealed their past misdeeds will be offered amnesty and freedom from legal charges against them. These commissions seem to have joined the lessons of Christian confession and the psychoanalytic cure: like the former, they link absolution to confession, and like the latter, they propose that telling about the trauma allows it to be discharged.

The result of the work accomplished by the South African commission has been virulently criticized. As a middle road between judicial redress and amnesty, the public inquiry has been attacked by those who would have preferred one extreme or the other: the former perpetrators prefer pardon, and the families of the victims often demand the condemnation of the guilty. Moreover, doubts have been expressed about each of the premises underlying the action of the commission. Some critics have wondered whether reconciliation is an appropriate goal for a democracy. After all, democracies generally do not impose a single thought or opinion on their citizens; the tolerance of dissident opinions is deemed to suffice. Surely reconciliation must be left to the free assessment of each individual, and does not depend on a collective decision. Moreover, the critics add, reconciliation is difficult to measure; and when it is measured, it seems not to have been achieved. According to a poll in 1998, two-thirds of the South African population judged that the work of the commission contributed to the deterioration of racial relations in the country, while only 17 percent believed that it improved them.

And can it be said that the truth was indeed established? Hardly. As critics of the commission have remarked, it did not have the means to verify the stories of witnesses, and therefore it had to be satis-

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fied essentially with the recording of their accounts. Surely, the "truth" that courts of justice produce is superior: police reports, cross-examinations, and laboratory work help to establish irrefutable facts. In addition, the very idea of a truth recorded once and for all, even by a commission composed of men of good will, has something problematic about it, and this is so not only for the army of "deconstructionists" who do not believe that truth exists. The facts can be established, but their meaning will always remain open to debate. Which elements of the context are necessary in order to understand these facts, and how far back must we go to grasp the actors' intentions? Even historians, working in clearly superior conditions, have difficulty arriving at a consensus on these matters.

Moreover, who is to say that the commission's audacious assumption is true, that truth leads to reconciliation? Often the opposite is the case: the examination of old wounds reopens them, and fuels hatred, and aggravates pain. A death that had finally been accepted must be lived through again, and the work of mourning begun once more. Hayner reports the dramatic case of a mother who learned from the commission's inquiry that her son had not been killed by the white police, as she had thought, but by his comrades in the African National Congress; the shock was so great that she died a few months later. After telling their stories, a great many of the witnesses suffered severe psychological problems, and the commission had no way to help them.

IT SEEMS FAIR to conclude, then, that the commissions of inquiry that have proliferated in recent years serve neither justice nor truth nor reconciliation. And yet public opinion runs high in their favor, and other countries imagine creating such commissions. How can we explain this? By the fact that the positive effects of these bodies are not located at quite the level that people imagine. It is not true, for example, that the guilty escape all punishment by confessing: their admission that they participated in reprehensible acts—murders, tortures, rapes—brings down upon them the fearsome power of social opprobrium, and they will live in shame for a long time to come. "Exposure is punishment," as one observer notes.

Nor is it the case that the families of the dead, because they obtain neither financial compensation nor the punishment of the guilty, gain nothing. In the course of the commission's sessions, they are led to play an active role in revealing the truth, and thereby they are provided with an escape from the passivity of victimhood. For the relatives of the murdered, the inquiry gives meaning to what happened, and a tragic meaning is certainly better than no meaning at all. They are integrated, by this means, into the life of the society. And the choice of public debate as a means of confronting conflicts is itself a social good: it teaches the citizens of a country to seek the remedy for difficult situations in deliberation and negotiation rather than in violence, or in the preemptory division of the population into guilty and innocent.

The work of the commissions also reveals another need of human societies, which might have gone unnoticed without them: as members of a community, we all wish to have at our disposal a certain image of our collective identity, which also includes a general consensus on the meaning of our past. This consensus will never be perfect: there will always be individuals in France who believe that the German occupation of 1940 was a good thing, and the resistance to it a bad thing; but the great majority of the population thinks otherwise, and this agreement is indispensable to the moral health of the society. The same is true for the condemnation of apartheid in South Africa, as well as of assassinations and torture under the military dictatorship in Argentina. This collective memory, this common narrative, does not need to be as precise as the work of historians. It is concerned not with knowledge but with recognition. The important thing is that it is formulated publicly, and reinforced by the sanction of official political authorities, government or parliament. We may believe that we are hardened individualists and sophisticated moderns, but we have no less need than our ancestors for a shared image of the past, for a common morality.

FOR ALL THESE reasons, we might conclude that for societies in transition, when there is a question of repairing the injustice of a previous political regime and challenging the responsibility of the state as a whole, commissions of inquiry would be preferable to tribunals, national or international. Indeed, the tribunals have understood that the proliferation of commissions represents a threat, and have opposed their creation wherever possible, as in Yugoslavia in 1998. And there are not only material reasons for this rivalry, though the representatives of the tribunal feared that the creation of a commission, which is so much less expensive, threatened their own existence. (The International War Crimes Tribunal costs around $100 million per year; but a commission, according to some estimates, would cost between $15 million and $20 million, over the

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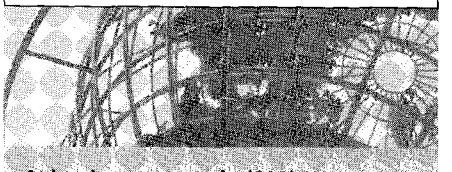

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course of two or three years.)

The fact is that, unlike courts of justice, commissions of inquiry lead to nuanced judgments other than simple verdicts of "guilty" or "innocent" that allow judges and their supporters to regard themselves as the very incarnation of the good. Those responsible for violence may be transformed by the generous attitude of the commission, while justice in a court of law leaves open to them only bold-faced opposition and denial. In South Africa, General Magnus Malan denied everything before the tribunal (and obtained his acquittal); but later he came before the Truth and Reconciliation Commission and admitted his share of the responsibility. We cannot expect people to tell the truth if they know that this act will lead to their punishment. Commissions, better than tribunals, conform to the spirit of Nelson Mandela's observation, made in 1997 and addressed not only to South Africans: "All of us, as a nation that has newly found itself, share in the shame at the capacity of human beings of any race or language group to be inhumane to other human beings."

WHAT SHOULD WE think, then, of contemporary attempts to repair the injustices of the past? In the first place, that they are legitimate. Once violence is introduced into history, it continues to exercise its malevolent effects for decades, and even for centuries. Hitler's misdeeds continue to hurt people today, just as the cruelties of the Boer War continued to influence those of the apartheid regime; and the violence of the colonial war in Algeria in the 1950s explains in part the recent massacres in that country. The way to repair these situations is not to repress the past, to attempt to forget it: repression leads only to neurosis, and causes frustrations, and provokes irrational vengeance. It is better to engage in a public act of reparation.

Such a choice, of course, is a risky endeavor. To reestablish a connection between morality and politics is to run counter to the great movement of modernity responsible for the establishment of democracies. (The bloody Crusades of the Middle Ages were conducted in the name of the good.) We also run the danger of practicing a policy in which only the justifications are moral, and not the actual motivations: colonization in the nineteenth century also claimed to be justified by the values of civilization and even by the necessity to defend human rights. The dream of a world in which all injustices would be corrected resembles our ancestors' notion of a life lived in submission to Providence more than it resembles our idea of a universe that is familiar with chaos and contingency, in which the complete control of events is impossible.

That is why reparative action is desirable, but not in all its forms. We must always remember that might loves to masquerade as right; and this does not make its reign any more acceptable. What is international justice worth if the permanent member countries of the U.N. Security Council have the right to veto all its decisions? How can a so-called "right of intervention" be legitimate when it is applied only to weak countries, which are not counted among our friends? What is this right which by definition exempts the powerful members of the G-8? The American government has never wanted to repent for repeated human rights violations committed by its agents in El Salvador and Guatemala, in Haiti and Chile, or to accept the overwhelming conclusions, formulated by various commissions of inquiry established by the United Nations, and therefore also by the United States. It is not hard to understand why Vojislav Kostunica mistrusts international commissions and tribunals. In the real world, the choice is usually not between a *Realpolitik* and a *Moralpolitik*, but between two politics of force, one candid, the other hypocritical.

But this sober observation should not condemn us to inaction. In the world of politics, the principle of the excluded middle rarely applies. Much more effective than these attempts to bring about a new world order based on virtue and justice are political acts within one country or between two countries. Political action is not necessarily a continuation of war by other means; it can also intervene in the symbolic realm in order to repair and thus to improve the life of the community. The community needs a common image of its past that better conforms to justice, and commissions of inquiry, and legitimate political bodies, such as governments and parliaments, are there to contribute to it. Such actions are not always sensational. They require patience and persistence, and they do not allow us to see ourselves as paragons of virtue. They may be the only reliable means of establishing a little more justice on this unjust earth.

—translated from the French by Carol Cosman

Ladies, Truth, and Logic

By SIMON BLACKBURN

A. J. Ayer: A Life by Ben Rogers

(Grove Press, 402 pp., $30)

THIS BEAUTIFULLY WRITTEN, sympathetic, and sensitive biography tells the life of Britain's best-known philosopher in the generation after Bertrand Russell. In the decades after World War II, Professor Sir Alfred Jules Ayer, or Freddie to everyone, was famous. He was familiar on television and radio, the paradigm of the vaguely left-wing London liberal and public intellectual. He mounted campaigns and championed causes, and he was sufficiently influential that, when he died in 1989, Margaret Thatcher's Minister for (many said, "against") Higher Education felt required to write to the press vilifying him. Perhaps less predictably, so did the Tory house-philosopher Roger Scruton.

The outline of Ayer's life is easy enough to tell. He was born in 1910, into a moderately well-off, cosmopolitan family. His father was of Swiss Calvinist descent, and his mother, Reine Citroën, came from a family of Dutch Jews. They were genteel "trade," though with real money in the background. Freddie grew up an only child, and there is the usual doubt about whether he was fundamentally happy, in a gilt Edwardian way, or fundamentally unhappy in a lonely, private-school, World-War-I way. Whatever the truth, there is no doubt at all that he was precociously and annoyingly clever. He gained a scholarship to Eton, and after the usual forced diet of Latin, Greek, and barbar-

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ity, there followed Oxford, where Freddie graced the grandest of colleges, Christ Church ("The House"), and philosophy.

After graduation, on the advice of his tutor Gilbert Ryle, Ayer went to Vienna to investigate the blossoming school of logical positivism centered around Moritz Schlick, Rudolph Carnap, and Otto Neurath. He and Willard van Orman Quine were the only outsiders invited in. Ayer, at the age of twenty-four, encapsulated what he discovered in Vienna in *Language, Truth, and Logic*, the book that is still the foundation of his philosophical reputation. Quine—who died last month at the age of ninety-two—returned to the United States to establish himself in a very different way from Ayer. Whereas Ayer never really transcended the basic tenets of the Vienna Circle, Quine's great reputation depended on an impressively imaginative rejection of them: a rejection that extended to the notions of truths of reason, of verification, of meaning itself. The last half-century in philosophy certainly belonged to Quine and not to Ayer, although it is dangerous to predict whether the next fifty years will follow suit.

For Ayer there followed, with apparent inevitability, the academic jobs, the professorships in London and then Oxford, and the string of volumes defending and modifying the youthful best-seller. In between all this professional progress, Ayer had (as a matter of course, one is unfairly tempted to say) a "good war." He joined the Welsh Guards, a fashionable and exclusive regiment, but mostly he seems to have hob-nobbed with old friends from Eton and the House: intelligence men and diplomats in New York, West Africa, Algiers, the south of France, and finally Paris. He stayed with Rothschilds and von Hoffmansthals, and irritated more orthodox soldiers. A good dancer (Richard Wollheim mistook him on first acquaintance for Frederick Ashton), he never seemed to stumble.

I met Ayer only a few times, though I certainly owe more to him than do most other philosophers. I first encountered him in 1970, when he was the representative from the Oxford sub-faculty of philosophy on the committee that gave me, a foreigner from Cambridge, my fellowship at Pembroke College, across the road from The House. The college system at Oxbridge is scarcely transparent, but the concept "sub-faculty" also needs explaining: there is no full faculty of philosophy in Oxford, because everyone knows that philosophy is a mere outhouse of Literae Humaniores, or Lit. Hum., the cobwebbed citadel of Classics, where the real men live. At my interview, Ayer was the only professional philosopher. In the same year, he was an examiner for my doctorate and perhaps because it would have been too shaming to have appointed as Fellow of an Oxford College someone who could not drum up a doctoral dissertation, everything went well.

A. J. Ayer by Jack Coughlin for The New Republic

It took me a while to learn how lucky I had been. Among Oxford philosophers, Ayer was probably unique in admiring my Cambridge approach to problems. Away in the Fens, we actually took seriously such things as the foundations of knowledge, the nature of probability and scientific laws, and the logical structure of scientific theory. This was, and is, very bad form in the Thames valley; and ever afterwards I found Oxford philosophers whose protégés had not got the job regarding me with the pained expression of those who know that the butler has stolen the silver, but haven't quite got the proof.

A few years later I found myself with Ayer in a train going to the Joint Session of the Aristotelian Society and Mind Association: the annual jamboree of British philosophers. He talked with perfect recall of my dissertation, which by then I had pretty successfully tried to forget. But what I remember most vividly is the way in which, talking still, he stalked out of Norwich station, straight to the head of a line of festering travelers, and whisked me unscathed into the first available taxi. The line was simply invisible to him—but perhaps you need to be British to realize the enormity that this implies. I curled up and wished I were dead. I expect he found me very boring.

The best anecdote in Rogers's vivid book comes from 1987, only a year before Freddie's death:

> At yet another party he had befriended Sanchez [Fernando Sanchez, a fashionable designer famous for women's underclothes]. Ayer was now standing near the entrance to the great white living-room of Sanchez's West 57th Street apartment, chatting to a group of young models and designers, when a woman rushed in saying that a friend was being assaulted in a bedroom. Ayer went to investigate and found Mike Tyson forcing himself on a young south London model called Naomi Campbell, then just beginning her career. Ayer warned Tyson to desist. Tyson: "Do you know who the fuck I am? I'm the heavyweight champion of the world." Ayer stood his ground. "And I am the former Wykeham Professor of Logic. We are both pre-eminent in our field; I suggest that we talk about this like rational men." Ayer and Tyson began to talk. Naomi Campbell slipped out.

It is hard to know where to begin: the rash courage, the quick wit, the charm, or the glamorous company. As to this last, let us not forget that while the intelligentsia of

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today may goggle enviously at a philosopher mixing in such circles (great white living rooms! models!), there were once times when Leibniz or Kant would not have been beatified by an invitation from someone whose skill lay in placing the holes in women's underpants. In any event, as Colin McGinn has remarked, the only touch that is lacking from the tale is Ayer going on himself to seduce the delectable Campbell, with no force required. It is not recorded what the detumescent Tyson and Freddie went on to talk about, nor for that matter what he was previously discussing with the group of young models and designers. (Logical positivism and the significance of the thong? McGinn suggested, archly.)

PERHAPS, ON THIS note, we should get the woman question out of the way. In 1952 (in spite of it being eleven years before sexual intercourse began, according to Philip Larkin), Ayer had been together with an artist and theatrical designer named Jocelyn Rickards for a couple of years. He began a series of affairs.

> "Girls came and went, or came and stayed," Jocelyn recalled. "Progressively I became part of a trio, a quartet, a quintet, and sextet (plus Renée) [Ayer's first wife].... All the ladies knew about me, I knew about all of them, but none of them knew about each other."

> "He was terrible," said one woman friend, "he used to boast about how many girlfriends he had, 'One for breakfast, one for lunch, one for dinner.'"

Personally, I find the appetite less in bad taste than the boasting—even Don Giovanni needed Leporello to do that for him; but Ayer was never one to hide his light under a bushel. From our present vantage point, when it requires the permission from a couple of lawyers, the Board of Trustees, and the entire faculty of Women's Studies for university inmates to nod at each other, those times seem very primitive. In those olden days wit and intelligence were still aphrodisiacs and few women had discovered that the energetic indulgence of indignation and resentment provides their supreme sexual pleasure. In any event, Ayer retained the affection of his friends: there seem to have been no Donna Annas and Donna Elviras flapping out of the wings to spoil his pleasures.

Men, it is true, sometimes reacted badly. The playwright John Osborne, who later lived with Jocelyn Rickards, described Ayer as "possibly the most selfish, superficial and obtuse man I had ever met," a "cruel pear-shaped Don Giovanni." Apart from the shape, this might remind one of D. H. Lawrence's diatribes against Russell, though Osborne at least had the excuse that Freddie was at that time trying to steal Jocelyn back. Yet one woman, the redoubtable Dee Wells, married Ayer twice, and just as the second marriage was about to take place another old flame, whom Rogers leaves coyly anonymous, reignited an intense physical affair that nearly prevented it. This in spite of the fact that she was some fifty years younger than Ayer, who was then seventy-eight years old and within a few months of his death. (Jocelyn herself regularly attended his deathbed.) Many of Ayer's partners, including his third wife, Vanessa Lawson, were great beauties of their day, and many were otherwise remarkable.

It is hard to analyze charm, but cut it as we may, Ayer certainly could turn it on. And he could also turn it off, appearing fidgety and irritable and depressed. Expansive or withdrawn, his moods were always salient. But he knew how to talk to women, and behind the vanity and the constant movement many seem to have detected a vulnerability and an insecurity that demanded their ministrations. Perhaps they also rose to the challenge of fighting off the withdrawal. Then, pear-shaped or not, his quicksilver mind, the melting, dark, bedroom eyes, and the sensual satyr's face seem to have done the rest.

Whether we reach for notions like obsession and superficiality, or words like "gusto" and "zest," may be a matter of taste. But Rogers delicately steers us into the realization that somewhere things were not quite right. Indeed, he confesses to having discussed with Dee Wells the possibility that Ayer might have been mildly autistic. The higher-functioning autistic can be capable of great feats of concentration and memory, and may be apt to gabble and twitch, and loves routine and order. But human feelings are basically foreign to such a stunted individual, and can be aped or donned only with difficulty. The autist's world is a place of "discrete sense-impressions, of patterned surfaces and disembodied stimuli."

All of this fits Ayer—and his philosophy—quite well. Still, as Rogers goes on to note, it is only part of the picture. Ayer did have emotional attachments (especially to children), he loved literature, and he was not short of imagination and even wisdom: "he never dreamed that morality might be reduced to a system, or social conflict eliminated." In short, there appeared not to be anything inhuman about him, only something enigmatic, perhaps lonely, undiscovered, and not fully understood, sort of a don's version of James Dean.

THERE WERE TWO major influences on Ayer's philosophy: the eighteenth-century empiricism of David Hume, and twentieth-century logical positivism. The first set the scene, and the second gave the kind of tools needed for coping with it.

In Hume's philosophy, as in that of many others, the mind first contains "perceptions," the data provided by conscious awareness. On the basis of those perceptions, we must struggle toward an understanding of the world external to the mind, and toward an understanding of the self and its place in that world. It would be nice if this understanding could be achieved by reasoning that started from the data of the senses. But Hume is famously pessimistic about that. We think of our world as one of enduring things that interact with each other and with ourselves, but we have no perception of these causal links, and no way of reasoning to their nature. We think of objects as enduring over time and independent of us, but our perceptions are fleeting and dependent upon us. We think of ourselves also as enduring through time, but introspection only shows us the same changing kaleidoscope of perceptions, never their owner.

In each case, Hume supposes that natural processes step in and take the place of reasoning. By custom, and by habit, and by association, and by trivial operations of the imagination, we stumble towards a "picture" of the world and of ourselves in it. But it is not a picture that survives rational scrutiny. It survives only because of our carelessness and our inattention. Above all, then, Hume is skeptical about the role of reasoning: our picture of the world is wholly irrational, or at best a-rational, being the upshot of processes that have no foundation in reason.

Curiously, the Viennese positivists managed to regard themselves as the heirs of Hume, while jettisoning this utterly central plank of his position. In the version that Ayer imbibed, they shared Hume's starting point—but they believed that modern logic provides forms of reasoning that escape Hume's skepticism. The principal weapon is the idea of "logical construction." Logical construction is a device for showing how statements about one kind of thing are tantamount to statements about apparently different kinds of things. "The average man" is a logical construction, in the sense that statements about the average man are really equivalent to more cumbersome statements about classes of flesh-and-blood men. Logical positivism claims that, in the same way, the meaning or content of statements about external objects, or the entities of scientific theory, reduces to the meaning of statements

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about actual and possible experiences.

The meaning of a statement, in the account of the logical positivists, is its method of verification. Objects in the world become no more than permanent possibilities of experience. The basic notion was Mill's, but the logical program belonged to Russell and the early Wittgenstein, although the most impressive attempt to work through the idea was Rudolph Carnap's dense classic, *The Logical Construction of the World*, which appeared in 1928.

THE LOGICAL PROGRAM answers Hume's problems by describing things in the world, and selves contemplating the world, in terms of sets of experiences. The implication is that statements that could not be translated into terms of experience are "metaphysical," and lack factual meaning altogether. Ayer's *Language, Truth, and Logic* was sensational not because it made any serious technical or logical progress beyond Carnap, but because it gleefully applied this test to statements of theology and ethics, both of which Ayer briskly dismissed as lacking factual meaning. Ethical claims only express the attitudes and policies of the subject and are incapable of proof. The same is true of religious utterances, insofar as they have any meaning at all:

> The presence of an ethical symbol in a proposition adds nothing to its factual content. Thus if I say to someone, "You acted wrongly in stealing that money," I am not stating anything more than if I had simply said, "You stole that money." In adding that this action is wrong I am not making any further statement about it. I am simply evincing my moral disapproval of it. It is as if I had said "You stole that money," in a peculiar tone of horror....

It was the apparent downgrading of ethics that still stung Roger Scruton and other conservatives all those years later. But in truth Ayer's position is not so very terrible: finding that ethics is a matter of which attitudes to hold does not make it either simple or unimportant. A person who believes this about ethics can still act ethically or unethically. And the positivists' approach to evaluative language—their view that finally it has no foundation in reality, that it must be used on other grounds—is arguably the principal part of their edifice that still attracts significant philosophical support. Not coincidentally, perhaps, it is also the part of the edifice that most closely follows Hume.

The years have been kind to *Language, Truth, and Logic*, which is still a marvelous introduction to philosophy, in spite of its first sentence: "The traditional disputes of philosophers are, for the most part, as unwarranted as they are unfruitful." But the years have not been kind to logical positivism. The starting point in experience, the conception of logic, and the constructions themselves all suffered from comprehensive attacks. Ayer parried some of these, particularly the onslaught of J. L. Austin's *Sense and Sensibility*, a formidable and savage attack on Ayer's entire philosophy of perception. But Ayer accepted other criticisms. He came to accept that the world contains more than sets of experiences. The meaning of a statement is sometimes more than its method of verification. It is not really credible, for example, that a statement about the past should mean no more than a prediction of what a historian will find in a library, even if that is what verifies it. When Ayer says "It must not be thought that this reduction of other people's experience to one's own in any way involves a denial of their reality" most other philosophers feel their jaws open rather than their eyes. As he himself later said of Carnap's constructions: "It was indeed impossible that so very large a rabbit should genuinely emerge from so very small a hat."

I READ ROGERS'S life of Ayer not long after finishing the second volume of Ray Monk's monumental life of Bertrand Russell. Monk has been rightly celebrated for his biography of Wittgenstein, but his lack of sympathy for Russell obtrudes on the later work, turning Russell's story into a long, unrelieved tragedy of wasted gifts and stunted emotions. It would have been possible to take the same attitude toward Ayer. After all, he had the same tangled family life as Russell, he did his best work when young, and he lived (much more so than Russell) to see that work attacked or sidelined by subsequent philosophers. Again, unlike Russell, who was first and foremost an English aristocrat, Ayer clearly suffered from serious insecurity, thinking of himself as an outsider, a Jew who had by luck and accident stumbled into the middle of English life.

It has been said that the lives of politicians are always lives of failure. The same tends to be true of philosophers, tied to their treadmill, footnoting Plato. Wittgenstein believed that he had finished philosophy once and for all in his early work, but was wrong; Ayer believed the same after *Language, Truth, and Logic*, and he was wrong, too. But big failures can co-exist with little successes: the new point, the new argument, the technique that needs developing and exploring, or even just the opponent routed. There may be no last philosophy; but then there is no last novel or last play either.

And so Rogers rightly resists the temptation to play up the tragedy, giving us instead a beautifully balanced and rounded picture of a very complicated man. He shows that if there was gaiety about Ayer, the dances and the parties, the wit and the fun, there was also a surprisingly strong sense of duty. He was in most ways a model professor. He managed his department in London with great devotion and success, and inspired pupils both there and in Oxford. He maintained a large output of articles and books, producing some

Two Poems for T.

The plants of the lake
saw you one morning.
The stones the goats the sweat
exist outside of days
like the water of the lake.
The lake remains unmarked
by the days' pain and clamor.
The mornings will pass,
anxieties will pass,
other stones and sweat
will bite into your blood—
it won't always be like this.
You'll rediscover something.
Another morning will come
when, beyond the clamor,
you'll be alone on the lake.

*

And you too are love.
Made of blood and earth
like the others. You walk
like one who won't stray
far from your own door.
You watch like one who waits
and doesn't see. You are earth
that aches and keeps silent.
You have bursts and lapses,
you have words—you walk
and wait. Your blood
is love—that's all.

Cesare Pavese

—translated from the Italian by Geoffrey Brock

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of the most beautiful, lucid, philosophical prose since Hume. Indeed, one hears more than an echo of Edinburgh in Ayer's own version of committing metaphysics to the flames:

> Accordingly, we who are interested in the condition of philosophy can no longer acquiesce in the existence of party divisions among philosophers. For we know that if the questions about which the parties contend are logical in character, they can be definitively answered. And, if they are not logical, they must either be dismissed as metaphysical, or made the subject of empirical enquiry....

Ayer was famous, in a way given to few intellectuals nowadays. The radio and television of his time still mounted intelligent programs, and people wanted to hear what men like Russell and Ayer thought about things. The world had not yet been dumbed down, and people were capable of listening to more than a sound-bite and of reading more than a gossip item. In Camden and Hampstead, tweedy liberals fought to reform the laws, to stop wars, and to further social justice. (Ayer chaired the Homosexual Law Reform Society, remarking that "as a notorious heterosexual I could never be accused of feathering my own nest.") The world had confidence in the power of knowledge and reason, and people such as Ayer were not yet contemptuously dismissed as irrelevant, as economically and politically powerless, as "the chattering classes." Perhaps we should look back with a measure of sorrow. If there is tragedy in the air, it may be ours rather than Freddie's. ■

Slaughterhouse Jive

By CASS R. SUNSTEIN

Introduction to Animal Rights: Your Child or the Dog? by Gary L. Francione

(Temple University Press, 328 pp., $69.50)

THERE ARE NEARLY 60 million domestic dogs in the United States, owned by over 36 million households. Over half of these households give Christmas presents to their dogs. Millions of them celebrate their dogs' birthdays. If a family's dog—say, a little black pug or a big Rhodesian Ridgeback—were somehow forced to live a short and painful life, the family would undoubtedly feel some combination of rage and grief. What can be said about dog owners can also be said about cat owners, who are more numerous still. But through their daily behavior, people who love their pets help to ensure short and painful lives for millions of animals that cannot easily be distinguished from dogs and cats. Are such people hypocritical? Should they change their behavior? Should animals have rights? To answer these questions, we need to step back a bit.

Many people insist that animals cannot have rights at all. Denying that animals are rational or self-aware, Kant thought of animals as "man's instruments," deserving protection only to help human beings in their relation to one another: "He who is cruel to animals becomes hard also in his dealings with men." Bentham took a quite different approach, urging that "the day may come when the rest of the animal creation may acquire those rights which never could have been withholden from them but by the hand of tyranny. The French have already discovered that the blackness of the skin is no reason why a human being should be abandoned without redress to the caprice of a tormentor.... A full-grown horse or dog is beyond comparison a more rational, as well as a more conversable animal, than an infant of a day, or a week, or even month, old. But suppose the case were otherwise, what would it avail? the question is not, Can they *reason*? Nor, Can they *talk*? But, Can they *suffer*?" And Mill concurred, repeating the analogy to slavery.

Of course many people think that the whole idea of "animal rights" is bizarre, a kind of parody or joke. But others find it obvious that animals can be given legal rights, noting that such rights are often given to people who lack ordinary human capacities. Infants, very small children, and people who are unconscious all have rights, at least as a matter of law.

Those who want to change human practices with respect to animals fall into two camps. Some people insist on the protection of animal welfare, whereas others seek animal rights. Animal welfare advocates tend to argue for laws preventing cruelty and requiring humane treatment. The Society for the Prevention of Cruelty to Animals is committed to this basic approach. Advocates of animal rights, by contrast, tend to oppose any and all human "use" of animals. They invoke the Kantian idea that human beings should be treated as ends and not means—but they extend the idea to animals, so as to challenge a wide range of current practices. These include the use of animals in rodeos, circuses, zoos, agriculture, hunting, even scientific experimentation. People for the Ethical Treatment of Animals and the Humane Society of the United States are committed to this approach.

On many topics, animal welfare advocates and animal rights advocates will join to urge large-scale reforms. Consider a few examples. At greyhound tracks, dogs often live in small cages, stacked on top of each other, for eighteen to twenty-two hours each day. Older greyhounds, and those who cannot run very fast, are usually killed or sold to laboratories. Over 20,000 of them are put to death each year. Race horses are very popular, but when they are no longer able to race they tend to end up at the slaugterhouse, usually at a young age. About seventy-five percent of the racehorses in America, or 100,000 of them, are slaughtered every year. Rodeos are well-attended, and if you have cable television you can easily see them nearly every week. One event is called "calf roping." Calf ropers chase a terrified calf, running at thirty miles per hour, until they throw a rope around its neck, force it to stop, and then flip it over and tie it up. Another event is called "steer wrestling." Here the goal is to jump off a horse and onto the back of a steer, twisting its neck until it falls to the ground. With respect to the use and abuse of animals, all this is just the tip of the iceberg.

Gary Francione is a lawyer and law professor who has devoted most of his career to the protection of animals. Francione believes not only in animal welfare, but also in animal rights. But much of his argument is about the importance of preventing unnecessary animal suffering. Francione insists that the problem lies not in our moral commitments, which are fine, but in our practices. He believes that what we do, with respect to animals, is quite inconsistent with what we think we should do. One of his goals is to show that our current beliefs require substantial changes, simply in order to prevent

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unnecessary suffering, which we purport to oppose. He urges that we should never "inflict suffering on animals merely for our pleasure, amusement, or convenience"—and that this idea means that we should not hunt animals, kill them for fur or clothing, or eat them. While recognizing that the question of the use of animals in scientific experimentation is more difficult, Francione also argues that animals should not be used in experiments, at least if they qualify as vivisection.

MANY PEOPLE HAVE argued for animal rights by emphasizing the cognitive abilities of animals—by suggesting, for example, that chimpanzees can learn sign language, or by showing that dogs and horses are quite intelligent. Taking his cue from Bentham, Francione finds the cognitive evidence interesting but unnecessary, even irrelevant. In Francione's view, the capacity to suffer is what is important. He thinks that the idea of "humane treatment," now embedded in our culture and our law, attests to our fundamental agreement with him.

Francione's major complaint is that we show a form of "moral schizophrenia about animals." While "we all agree that it is morally wrong to impose unnecessary suffering on" them, we also impose a great deal of suffering on them, and none of this is actually necessary. Francione is most confident that our practices violate our ideals when it comes to the use of animals for sport hunting, entertainment, clothing, and meat. Hunters kill "at least 200 million animals per year, not counting the tens of millions that are wounded and not retrieved and those killed on game farms or in similar contests." While some hunting provides protection against dangerous animals or is animated by economic purposes, most of it is just for fun. (As part of that fun, hunters sometimes lie hidden before ambushing and then shooting animals; sometimes they imitate the sounds of other animals to lure their prey and then kill them.) Francione also objects that animals are used and abused for amusement, not only in rodeos, but also in circuses, carnivals, racetracks, and zoos.

To be sure, animals are sometimes treated well and protected against suffering. But often they are not. In circuses, whips, chains, metal hooks, and electric prods "are all regularly used for training." About 40 million animals are killed each year so that their pelts can be turned into clothing. Many of these animals spend all of their lives in truly deplorable conditions, often confined to small wire cages before being killed by electrocution, gassing, or neck-breaking. In many domains, great progress has been made in the care and the protection of horses; but countless horses continue to be subject to cruel treatment and early death.

Still, the largest source of abuse of animals, in Francione's view, is agricultural: the use of animals as food. Many of the eight billion animals killed for food each year are born on "factory farms." This means that "animals are raised in the smallest possible spaces and the cheapest facilities," with cattle being "squeezed shoulder to shoulder in large dirt corrals," and most lacking "enough space to move their limbs or turn around." While chickens "are crammed into buildings holding thousands of birds," pigs used for breeding "are kept in metal farrowing stalls two feet wide." Many animals are mutilated "to decrease injuries from close confinement" and to ensure docility. Both bulls and pigs are castrated, sometimes with a knife, sometimes with pincers or pliers. Pigs have the added bonus of having their tails cut off and their teeth clipped. Owing to the conditions under which they are raised and live, animals used for food are highly susceptible to injury and disease. By the time they are slaughtered, over 80 percent of pigs have contracted pneumonia.

FRANCIONE THINKS THAT none of this is necessary. Invoking the views of the Department of Agriculture and the American Dietetic Association, he urges that "a completely plant-based diet, supplemented by vitamin B-12," is entirely enough to ensure excellent human health. And he goes further, suggesting that avoidance of meat can be helpful in reducing a number of health problems, including heart disease, cancer, diabetes, hypertension, and obesity. Francione thinks that with respect to food, it is quite unnecessary to ask hard questions about how to balance animal interests and human interests. Animal suffering can be prevented without seriously compromising human interests.

Francione acknowledges that vivisection, or scientific research that involves animals, raises a much harder question. He is alert to the widespread view that such research confers indispensable benefits on human beings. Still, he concludes that here, too, are serious problems. A part of his claim is that "the use of animals in biochemical research is no less callous or exploitative, no less an industry, than is factory farming or wildlife management." He contends that researchers make no special effort to minimize distress and suffering.

Francione also thinks that the link between use of animals for research and real benefits for human beings is "usually very attenuated." He refers to many examples of possibly gratuitous suffering, including research in California attempting (with little success) "to change female dogs into male dogs and male dogs into female dogs through the use of hormones." Or consider efforts to investigate the effects of stress on the development of lambs, by removing babies from their mothers, placing them in hammocks, and then subjecting them to electric shocks; attempts to study "wounds" by shooting cats in the head with steel pellets; investigations of "learned helplessness" by burning "dogs with such intensity and duration that the dogs just gave up trying to escape the pain." Francione suggests that such cases are not atypical—and that they show that the human benefits of animal research are greatly overstated. (His discussion here is thin and superficial, a point to which I will return.)

What accounts for the disparity between our commitment to humane treatment and our less-than-humane prac-

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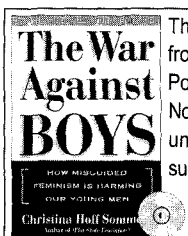

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tices? Maybe most people are unaware of those practices, or fail to focus on them. If they did focus on them, they might change them. The painfully vivid photographs of animal suffering in Francione's book support this view. They are as convincing, in their way, as any of his arguments. But this is not Francione's own answer. Veering from animal welfare to animal rights, he thinks that the basic problem is that animals are "property," things that we own. Since animals have the status of things, we treat them as means to our ends, rather than ends in themselves. Francione wants the law to consider animals as "persons" rather than as "property."

He is aware that many laws on the books, motivated by concerns about animal welfare, seem to ban cruelty to animals. Some such laws are strongly worded. In Francione's view, however, these laws do very little good. They explicitly exempt domains in which much suffering occurs, including the killing of animals for food, in hunting, or for scientific research. Such laws, moreover, are narrowly interpreted by courts, giving the benefit of every doubt whenever a human being is alleged to have acted cruelly. Even worse, such laws are rarely enforced, because public prosecutors are the only people who can enforce them, and they have limited budgets and apparently little interest in using what resources they have for the protection of animals. Since ordinary people cannot sue to protect animals, and since animals are not given legal representation, enforcement is sporadic at best. This is a central point. If human beings were authorized to bring suit on behalf of animals, existing law would mean much more than it now does.

It is at this point that Francione's arguments become more ambitious. He believes that the "failure of animal welfare laws should not come as any surprise. If the animal is property, how can that animal be anything other than a commodity? How can an animal's interests be assessed or valued at any level higher than is necessary to ensure efficient exploitation of the animal property for its designated purpose?" Francione thinks that the idea that animals are property should be replaced by a "principle of equal consideration." By this Francione does not mean that we must "treat animals in the same way as humans," or that we should "give up the idea that in situations of true emergency or conflict—where necessity requires—we may prefer human over animal interests." What the principle of equal consideration means is that animals cannot be treated as mere "things."

Animals, like human beings, have inherent or intrinsic value. Hence Francione goes still further, urging that the principle of equal consideration means that animals must be seen as "persons." He does not think that animals should be subject to the criminal law, or argue that "we should extend to animals the right to vote or to drive a car or to own a property or to attend a university.... But just as we believe that humans should not suffer from use as the slaves or property of other humans, animals should not be made to suffer from our use of them as resources." Here Francione commits himself to animal rights, not merely to animal welfare.

Francione uses these ideas to challenge some widely held views. His easiest target is Descartes, who thought that animals cannot experience pain or pleasure and are more or less like robots. This astonishingly dumb idea has few adherents today, but some philosophers do follow in Descartes's footsteps, urging that animals lack real "desires" or "wants." Francione is able to dismiss this view quite quickly. He has an equally easy time with the suggestion that we are authorized to act cruelly, because animals themselves act cruelly or that our use of animals is justified because it is "natural." The cruelty of (some) animals does not justify human cruelty. And as Mill wrote long ago, naturalness is not a sufficient justification for anything.

More respectable and widespread is the view that human beings are qualitatively different from animals, above all because we have cognitive abilities that they lack. Invoking Darwin, Francione insists that human beings and animals are more alike than we generally acknowledge. But, wisely, he does not press this disputed point. For him, as for Bentham, the ability to reason in certain ways, even if it is limited to human beings, does not make it acceptable for human beings to inflict suffering on animals or to treat them as objects.

But Francione knows that Bentham stopped well short of where animal rights enthusiasts would like to go. Bentham believed that so long as human beings minimize animal suffering, it is acceptable to kill animals and to eat them. The reason is that animals are not self-aware and hence do not suffer from the knowledge that they will die and be eaten. In an important way, the well-known utilitarian philosopher (and animal welfare advocate) Peter Singer is in Bentham's camp. While insisting that animals should be protected from unjustified suffering, Singer also believes that most animals lack self-awareness and desires for the long-term future. He urges that what is important is their pains and pleasures while they are alive—not that they continue to live.

Singer concludes that it is morally acceptable to eat animals who "have a pleasant existence in a social group well suited to their behavioral needs, and are then killed quickly and without pain." Francione strongly disagrees. He thinks that animals very much care about what happens to them, that they want to continue to live, that they are aware of their individuality, and that by virtue of their sentience, animals have a sufficient "interest" in continuing to live.

Francione knows that many people believe that there are serious conflicts between human beings and animals, and that when such conflicts occur, it is entirely proper for us to prefer human interests. (Hence his subtitle, *Your Child or The Dog?*, is misleading and more than a little ridiculous; this is really not the kind of conflict that concerns Francione.) But in his view, many of the conflicts exist only because of human practices, and these might be changed. "If we recognize that animals have a basic right not to be treated as our resources, and we abolish those institutions of animal exploitation that assume that animals are nothing but our resources ... we will stop producing animals for human purposes and thereby eliminate the overwhelming number of these false conflicts in which we must 'balance' human and animal interests." If animals are not produced for entertainment or food, many of the current issues will therefore disappear.

Francione ends with the striking suggestion that his proposals, ambitious and radical though they seem, actually fit with what we "already purport to accept." Of course acceptance of those proposals would come with a price. "We would have to forgo the unnecessary pleasure of eating animals and having their fat clog our arteries, the fun of watching them being tormented in rodeos or circuses, the excitement of walking in the woods and blowing them apart or wounding them with arrows, and the very questionable science involved in making them addicted to drugs that they would never use except in laboratories." Francione does not believe that this price is too high to pay.

No one should doubt that the movement for animal rights has come a long way. In 1792, Mary Wollstonecraft wrote *A Vindication of the Rights of Women*, and in the same year Thomas Taylor responded with *A Vindication of the Rights of Beasts*, a parody designed to reveal the absurdity of Wollstonecraft's position by suggesting what seemed to Taylor the unthinkable thought that beasts, as well as women, have "intrinsic and real dignity and worth." With many others, Francione thinks that Taylor's claims, ventured as parody, were right. And though some people continue to ridicule animal rights advocates, Francione's claims are serious

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ones, urged passionately but with admirable lucidity, and with considerable sensitivity to counterarguments.

To come to terms with what Francione has to say, it is necessary to see that he makes two different claims. The first, which dominates the first half of his book, is simple and intuitive, and based on animal welfare. The second, which dominates the second half of the book, is complex, unintuitive, and it is based on an amalgamation of claims about animal welfare and animal rights. Consider the simple claim first. Francione believes that human beings should not inflict suffering on animals unless it is "necessary" for us to do so. In fact, he insists that most people would agree with this claim. But he also thinks that the massive suffering inflicted on animals is not, in fact, necessary. Francione is on firm ground with respect to entertainment and hunting, but on much less firm ground with respect to scientific experimentation; and eating animals seems to be an intermediate case. The principal contribution of his argument here consists not in any novel theoretical claims, but in bringing to light practices, many of them unconscionably brutal, that we prefer to ignore.

But even here there are problems. Francione does not confront an obvious question. What if significant steps were taken, in all of these domains, to reduce the level of animal suffering? (Hunting is obviously a special case, where some bans might be well justified.) What if anti-cruelty laws were amended to protect animals against unnecessary suffering when they are raised for food or used in entertainment or scientific experiments? This is hardly unimaginable. Indeed, some nations have taken steps in precisely this direction. Why wouldn't this be the best path for the future? Francione's answer, largely implicit, is that such laws will be ineffective in practice. He appears to think that the only real way to prevent unnecessary animal suffering, as an empirical matter, is not to police current practices but to eliminate them. Maybe he is right. But he does not establish this crucial empirical point. In any case, he does not say much to deflect the reasonable suggestion that our current priority should be to amend existing law to prevent the most indefensible practices, through selective bans and restrictions.

An additional problem is that the idea of "necessity" is insufficiently analyzed. Few things are literally "necessary." When we say that something is necessary, we usually mean that it is clear that it should be done, all things considered. Perhaps scientific experimentation on animals is necessary in the sense it will save hundreds or even thousands of human lives. Francione's discussion here is quite thin. He does not effectively counter the argument, made by many specialists, that such experimentation has produced huge benefits. Any reasonable overview, such as that provided by Deborah Rudacille in her admirably balanced book *The Scalpel and the Butterfly*, will show many examples, starting with Pasteur's foundational work on cholera and rabies, and continuing to contemporary work on cancer and heart disease.

Indeed, experimentation on animals can even produce large benefits for the very species involved. Medical advances have provided dramatically improved care for dogs, cats, and horses, as well as human beings. It is controversial, of course, to say that the suffering of certain animals can be entirely redeemed by benefits to other animals of the same species. But if scientific experimentation does a great deal of good, and if animals can be protected against abuse in the process, might it not be justified, whether or not it is in some strict sense "necessary"? Indeed, scientific experiments might well produce far more gain than in ordinary cases in which we consider the infliction of harm "necessary."

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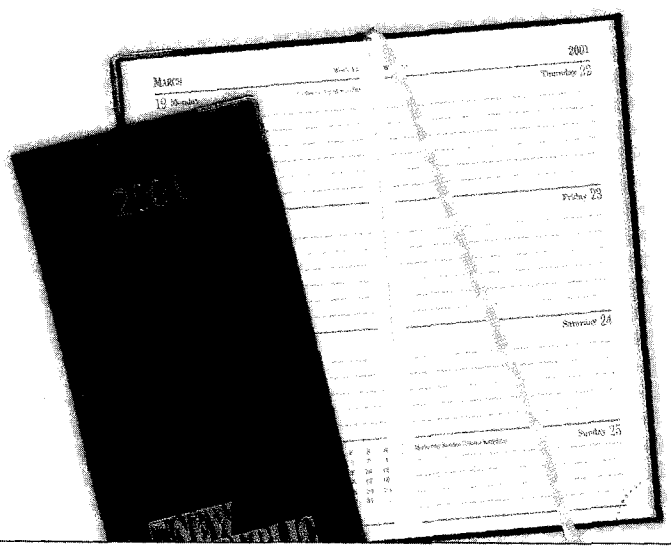

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The same questions can be asked about Francione's plea for a stop to meat-eating. Suppose that to ensure a well-balanced diet, eating animals is desirable, certainly for children but for adults as well (a point that Francione contests on empirical grounds). Suppose, too, that steps can be taken to ensure that animals raised for food are given decent lives. In such circumstances, would it be so clear that meat-eating is indefensible? Within the utilitarian framework, Francione has no simple answer to such a question—a point supported by the fact that Bentham and Singer, strong advocates for animals and also utilitarians, do not object to meat-eating.

It is for this reason that Francione's more radical proposals depend not on claims about animal welfare, but on more ambitious arguments about animal rights. Hence he seeks to establish that animals should be treated as "persons" entitled to "equal consideration," and emphatically not as "property." Francione seeks to raise the moral status of animals, by making it clear that they are ends in themselves, with intrinsic value, rather than mere means to human ends. In this regard he moves well beyond Bentham, seeking to establish that animals have rights that are inviolate, whatever the consequences.

Francione is right to say that animals have intrinsic value; but at first glance, it is not clear whether Francione's objection to the idea that animals are "property" is mostly semantic. Perhaps the term need not matter much. If animals are property, it does follow that people can buy and sell them, and also that they are "owned" as a matter of law. But it does not follow that "owners" can do anything they want with or to animals. You own your house, but you are probably not allowed to burn it down or blow it up, or to use it as a concert hall. You own your stereo, but if you have nearby neighbors you cannot play music as loud as you want. In most domains, the rights of "owners" are severely qualified.

This is certainly true in the case of animals. The fact of ownership does not mean, as a legal matter, that people can treat living creatures as mere means to human ends. In multiple ways, current law forbids people from treating animals however they wish to treat them. You are not permitted to abuse your cat or your dog. In many states, you are even under an affirmative obligation to take decent care of any animal that you "own," by providing food, shelter, and medical care. All this suggests that the status of "owner" is not incompatible, in principle, with a firm commitment to preventing the unnecessary suffering of animals or even with treating animals as beings with both legal rights and intrinsic value.

Indeed, those who think that they are "owners" of their pets are unlikely to think that their animals are mere commodities, or that attention need not be paid to "their" animal's well-being. All they think is that, as owners, they have certain rights and certain duties—the sorts of rights and duties that make sense for human beings entrusted with the care of living creatures. And we can go further. The fact of ownership even protects animals in important ways. If you own your dog, you are morally obliged to protect him; you are also allowed to sue people who have harmed him, and this makes it less likely that such harm will occur.

Perhaps Francione objects to the fact that many animals—dogs, cats, horses, and others—are bought and sold in the marketplace. And many pet stores do treat animals badly, unconscionably so. But are animals in any sense harmed by purchase and sale, standing by itself? People who have bought their dog do not think that they own a "thing." Payment does not make people believe that the animal with whom they live is a mere commodity. The real problem here is the mistreatment of animals, not the mere fact of sale.

IN THESE CIRCUMSTANCES, the legal concepts of "property" and "ownership" do not seem to matter all that much. Maybe Francione does not really disagree with this point. Perhaps he believes, more modestly, that the notion of animals as "property" helps to create certain unjust relationships—that it tends to make (not all, but too many) people think that animals are largely means to human ends, with interests that can be readily subordinated in case of conflict. He appears to think that if animals are "property," the law is unlikely to recognize their interests. I think that Francione should acknowledge that the language of property does not necessarily signify that animals will be treated as means or that their legal rights will amount to little in the real world. But he might be insisting, more plausibly, that the terms we use can help to form attitudes and policies, and that if we use words like "property" and "own," we will carry with us a conception of the relationship between people and animals that, on reflection, we ought to reject.

Put in this more cautious form, as a kind of empirical hunch about the effects of language on practices and even laws, Francione's view seems quite reasonable. Of course, human beings should, under certain circumstances, have rights over animals—at least if the existence and the exercise of those rights promotes (or does not injure) the well-being of animals themselves. It would be foolish to say that the movements of domestic cats, or horses used in equestrian events, cannot be controlled by people—not because the control is "necessary" to protect human beings, but because it is highly likely to make the lives of those cats and horses longer and better. We can acknowledge this point while also doubting that animals should be seen as "property" or as "owned." I think that in the end Francione is right to object that this way of talking does violence to people's most reflective understandings of their relationships with other living creatures.

But we have not yet gotten to the bottom of things. Francione's principle of equal consideration is intended to move beyond the utilitarian framework, to make Kantianism safe for animals. He thinks that animals should not be used for the sake of human beings, even if the benefits would be very large. On behalf of his view, he urges that most people would not tolerate experimentation on human beings, even if the potential benefits, for other human beings, would be very large. Francione thinks that animals, no less than human beings, should have rights that operate (in Ronald Dworkin's metaphor) as "trumps" against other interests. The right to be treated as an end, rather than a means, should ensure that animals cannot be used, even if the consequences of use would be good on balance.

Some of Francione's argument is hard to follow. In his view, the central reason that animals have rights, and should be treated as ends, is that they have the capacity to suffer. Only sentient creatures, he thinks, should be protected against human "use." Where Kant thought that a capacity for a sense of justice was a precondition for rights, Francione believes that the real precondition is the experience of pain. In his view, creatures with the capacity to suffer cannot be treated as "means," whatever the consequences (except in a genuine emergency).

Francione is taking a complicated and unusual step here: he is merging the idea of animal welfare with the idea of animal rights, through the claim that animals have rights because they can suffer. It is not clear that the merger of the disparate traditions can be made to work. The importance of suffering, under the utilitarian framework, is inextricably intertwined with the insistence on the overriding importance of consequences. I am not sure that Francione can insist on the centrality of suffering, and the right not to suffer, while also arguing that overall consequences do not matter. And under the Kantian framework, the insistence that consequences do not matter is inextricably intertwined with the claim that human beings are moral agents. I do not see how Francione can insist that consequences do

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not matter while refusing to say whether and in what sense animals are moral agents.

But let us pass over these complexities. Is it right to say that animals should never be "used" by human beings? What exactly does this mean? Does it mean that greyhound racing should be banned, even if greyhounds are well-treated and actually enjoy racing? Does it mean that police officers may not ride horses, even if those horses enjoy their duties and generally flourish? Does it mean that zoos should be outlawed, even if zoo animals live good lives?

Francione is right to say that sentient animals have intrinsic value, and that animal well-being is a good in itself. He is also right to reject the widespread view that animals are not entitled to rights because they lack a capacity to think in moral terms. Even if animals lack that capacity—a disputed empirical issue—human beings certainly have it, and we should exercise our capacity so as to act morally. For us, at least, might does not make right. But I am not sure that Francione's claims about the intrinsic value of sentient animals, and about the need to treat animals as ends, can do as much work as Francione thinks. More particularly, I am not sure that these claims adequately support Francione's plea for the abolition of any practice in which animals are "used." In many domains human beings seem to be "used," and the relevant practices are not objectionable for that reason. When you hire a plumber, a lawyer, an architect, or someone to clean your house, you are treating them as means, not as ends.

To be sure, these arrangements are consensual rather than coercive, and Francione makes much of the fact that human slavery is banned. He thinks that if we reject human slavery, we should reject its equivalent for animals. But he goes much too fast here. Children are certainly not slaves, and they are not "owned"; but adults have the legal right and the moral right, within a certain range, to restrict the choices of children. People do not have equivalent rights over adults, but that is because a general capability to choose is central to the well-being, properly conceived, of adult human beings.

Of course animals should be permitted to make many particular choices. But is the general capability to choose—where to go, what to do, when and what to eat—so central to the well-being, properly conceived, of greyhounds and horses and cats? This is much less clear. At the very least, it is sensible to authorize human beings to prevent these animals from making choices that would endanger their own well-being. Now this does not mean that human beings can control animal behavior however they wish. They should attempt to make it possible, not only for animals not to suffer, but also for them to live decent lives. Often this means that people should just leave animals alone. But the obligation to treat animals as ends, and not as things, does not require all animals to be given unlimited freedom of choice.

If this is right, then Francione's general claims, which are convincing, do not support his particular recommendations. In fact, it is not so clear that human rights, including rights of autonomy, cannot be overridden when the benefits of doing so are very large. Francione makes much of the widely held intuition that we should not force a few people to face scientific experiments even if the collective benefits would be enormous. "We generally do not think that we should use any humans as unconsenting subjects in biomedical experiments, even though we would get much better data about human illness if we used humans rather than animals in experiments." To be sure, our horror at the use of human beings for scientific experimentation is useful; it helps guard against practices that would, in most real-world cases, be impossible to justify. But we should be careful with the moral intuition here.

Well-suited to almost all real-world cases, the intuition might misfire if applied across the board. When the stakes are sufficiently high, government is permitted to override what would otherwise be rights, even constitutional rights. Free speech and freedom of movement can be restricted in times of war. In fact, an emergency is not required; you can be banned from writing graffiti on national monuments and even from trespassing on certain areas to carry your views to government officials. If consequences are relevant in the case of human beings, then they matter for animals, too. Francione has not shown that human use of animals is morally unacceptable if the relevant animals are treated as well as possible and allowed, to the extent possible, to live decent lives.

In my own view, Bentham was entirely right. Because animals can suffer, they should be protected, much more than they now are, against pain and distress. The idea that animals are mere "property" is an anachronism, inconsistent with our considered judgments about the relationships between people and animals; we should abandon the metaphor of "property." Most of the arguments against new efforts to protect animals are astonishingly self-serving, reflecting a kind of moral and logical obtuseness that their proponents show in few, or no, other settings. From this it does not follow that people cannot have rights against animals, or that they should not be allowed to restrict the movement of animals, or that scientific experiments on animals should be halted. The most ambitious claims for "animal rights" have yet to be established. Still, the less ambitious claims are quite convincing. They require significant changes in our practices. ■

CORRESPONDENCE

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Northern exposure

To the editors:

Franklin Foer is out of line in ridiculing Representative Collin Peterson for proposing a constitutional amendment "allowing northwestern Minnesota to secede to Canada" ("Party Foul," December 18). As you report it, that does sound "eccentric." The truth is somewhat less flaky. First off, it wasn't "northwestern Minnesota"; it was the Northwest Angle, the little piece of Minnesota embedded in Manitoba. And the reason the congressman proposed the amendment was to draw attention to what he considered draconian fishing regulations, which Ontario had drafted and which Peterson contended would make it hard for resort operators in the Angle to continue operating. This may be a novel way to conduct diplomacy, but it appeared to work: Peterson managed to get representatives of Canada and Ontario to the table to discuss the proposed regulations.

John H. Wilde
Greenwood, South Carolina

Class rank

To the editors:

Andrew Sullivan dismisses the charge that race played any role in the disproportionately large number of black votes for president that went uncounted ("Drag Race," December 18). Seeking to shift the burden to class, he notes that undercounted votes were "disproportionately located in poorer counties, and poorer counties tend to have disproportionate black populations." Therefore, he concludes, "the discrimination, if that is what it is, was based on class, not race." This logic is bizarre. What does he think explains the concentration of blacks in poorer counties, some peculiar penchant for poverty?

Nathaniel Frank
Brooklyn, New York

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WASHINGTON DIARIST

My Boss the Fanatic

A WOMAN I RECENTLY MET at a Bat Mitzvah asked me what I do for a living. Experience told me what was coming, so I kept my answer generic: I work in politics. She followed up, pressing until she got the answer she wanted—or, more accurately, did not want: I work for Senator John Ashcroft, Republican of Missouri. I'm used to fellow Jews disliking my boss, but her answer still took me by surprise: "I'm speechless."

WITH HIS NOMINATION TO BE GEORGE W. Bush's attorney general, Ashcroft's image among my co-religionists seems to have deteriorated even further. The National Council of Jewish Women opposes his appointment. Jewish senators like Barbara Boxer and Charles Schumer have expressed their displeasure. Abraham Foxman, national director of the Anti-Defamation League, said this week, "We question whether his religious views will have an impact on his role as attorney general." I'm beginning to wonder whether I'll ever be able to safely cruise Bat Mitzvah buffet tables again.

CRITICS IMPLY THAT ASHCROFT, BECAUSE of his strong Christian beliefs, is intolerant of Jews. Actually, he's more than tolerant; he's downright philo-Semitic. Ashcroft was born to a gentile family in a predominantly Jewish Chicago neighborhood. His mother served as a *Shabbos goy*, turning ovens on and off as needed (a practice many Jews found charming when practiced by a young Colin Powell—but then Powell is African American and pro-choice). Ashcroft's father even took a mezuzah with the family when they moved from Chicago to Springfield, Missouri, where he kept it affixed to his doorpost until his death, in 1995. Ashcroft, I'd wager, knows more about Judaism than half the Jewish members of the Senate.

WHEN I FIRST TOLD ASHCROFT THAT, as an observant Jew, I would not be able to work on Saturdays and certain holidays, it was a point in my favor, not a strike against me. Once, I stood up during a Friday afternoon briefing and said I needed to leave. He asked me where I was going, as it is unusual for staffers to walk out of briefings. I told him that the sun was setting, and he immediately understood and ordered me to hurry along.

ASHCROFT, HIS DETRACTORS SUGGEST, is a religious fanatic, because his religion dictates that he cannot smoke, gamble, drink, curse, or dance. But it may be precisely because he is scorned as a "fanatic" that he has been so tolerant of my own somewhat odd religious practices. After all, when I go to weddings, I won't participate in mixed dancing. I fast half a dozen times a year, and I unscrew the lightbulb in my refrigerator every Friday so I won't turn on the light on the Sabbath. I'm every bit the "fanatic" that he is—maybe more so.

WHAT MOST LIBERALS AND MOST Jews don't understand about people like Ashcroft is that their deep respect for religious faith genuinely transcends sectarian divides. And that often makes it easier for me, as a religious Jew, to work for them than for Jews or Christians who don't take any religion seriously as a force in people's lives. In my experience, when you tell a nonobservant Jewish boss you need time off for Shavuot, there is often a moment of discomfort, as if he thinks you are acting superior for taking off what many Jews see as a minor holiday. When you tell an observant gentile, he may ask you what the holiday is and then say he is happy that you are observing Pentecost.

AS SENATOR, ASHCROFT HELD A VOLuntary Bible study in his office every morning. I didn't go and suffered no adverse consequences. But the office's other Orthodox Jewish staffer—Ashcroft may well have employed more Orthodox Jews than any other senator—attended regularly. And every other attendee, including the senator, was impressed by this staffer's knowledge and understanding of the Old Testament. Whenever staffers ate with the senator, someone began the meal with a prayer. While the prayers were of the Christian extemporized variety—as opposed to the Jewish approach of reciting specific blessings for specific foods—they were ecumenical in content. In fact, Ashcroft pointedly insisted that prayers not mention Jesus, in order to be inclusive of all the religions in the office.

AND THERE'S ANOTHER REASON FOR Ashcroft's sensitivity. It's not just that as a devout person he feels an affinity to other believers. He feels a particular affinity to members of minority religions, because, hard as it is for many Jews to understand, he also sees himself as part of a small, sometimes scorned religious minority.

ASHCROFT IS A MEMBER OF THE Assemblies of God (often called Pentecostals). Members of the AOG are probably even less well-represented in the upper echelons of American politics, industry, and academia than are Orthodox Jews. In fact, Ashcroft would be only the second AOG Cabinet member ever. I know Ashcroft has suffered religious bigotry, because I've seen it. In St. Louis before the election, some people told me they were uncomfortable with the fact that his faith forbids him to gamble, smoke, dance, drink, or curse. I could not help but wonder how these people would feel about a non-Jew who expressed similar misgivings about a Jewish politician—like Joseph Lieberman—who did not eat cheeseburgers or ride on the Sabbath and who threw out all his bread products every spring. When Al Gore chose the Connecticut senator as his running mate, THE NEW REPUBLIC wrote: "What is so startling about Lieberman's observances, and so edifying about them, is that they appear to have served as the basis for his engagement with the world. His career stands as a rebuke to those Jews—and those Christians—who insist that a religious life requires a withdrawal from society" ("Lieberman," August 21, 2000). Ashcroft, in his own way, represents a model just as unusual and just as impressive.

JEWS SOMETIMES SEEM TO VIEW members of the Christian right as contemporary versions of the Christian zealots who oppressed Jews in eighteenth-century Ukraine or fifteenth-century Spain. But I see them as more like the Puritans, who encountered religious prejudice in England and braved death to come to the New World, where they could be "fanatics" in peace. And, because they knew that their observances made them objects of scorn in the old world, they helped create a new world that demanded religious toleration, even for religious beliefs that they themselves rejected. If Jews, or anyone else, oppose Ashcroft because of his views on affirmative action or abortion or antitrust, I might disagree, but I can understand. But if they oppose him because they think his faith oppresses others, then they misunderstand his religion, and perhaps even their own.

TEVI TROY

TEVI TROY, former policy director for Senator John Ashcroft, is writing a book about intellectuals in the White House.

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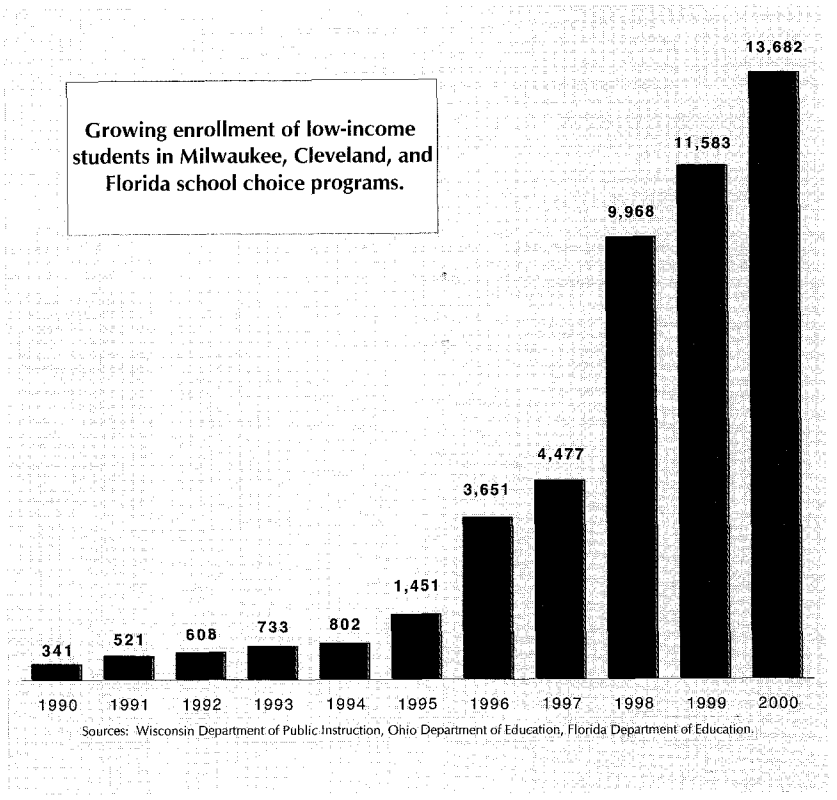
School Choice is Widespread — Unless You're Poor

By Kaleem Caire, Executive Director, Black Alliance for Educational Options (BAEO)



In the politically charged world of education policy, school choice is often branded as "experimental," "untested," "controversial," and, of course, "risky."

Those stigmas are dishonest. Most American parents have school choice and value it highly. If you want a real school choice "controversy," try taking it away from middle class parents. Or make teachers enroll their children at the schools where they work.

How pervasive is school choice? According to scholars Richard Elmore and Bruce Fuller, "[c]hoice is everywhere in American education. It is manifest in the residential choices made by families [and] in the housing prices found in neighborhoods [and] when families...send their children to private schools....[T]hese choices...are strongly shaped by the wealth, ethnicity, and social status of parents and their neighborhoods." *(Who Chooses? Who Loses?* Teachers College Press, Columbia University, 1996.)

Similarly, Jeffrey Henig and Stephen Sugarman document the "very considerable degree to which families already select the schools their children attend...[M]ore than half of American families now exercise school choice...[S]ome families have more choice than others." *(School Choice and Social Controversy,* Brookings Institution Press, 1999.)

The reality, then, is that parental school choice is widespread — unless you're poor. Only when low-income parents, mostly of color, have the option does school choice become "experimental and "untested."

The Black Alliance for Educational Options **(BAEO)** is conducting a national public information campaign about this unacceptable double standard. We will provide accurate information about the benefit of expanding educational options for parents of students in low-income families and at low-performing public schools. In the last decade, three such tax-supported voucher programs have been enacted in Milwaukee, Cleveland, and Florida. The accompanying chart illustrates their dramatic growth. For the most comprehensive summary of these programs, see "What is School Choice?" at www.schoolchoiceinfo.org.

The Milwaukee, Cleveland, and Florida voucher reforms are overwhelmingly popular among parents whose children participate. Why? Well, as Vice President Al Gore said last year: "If I was the parent of a child who went to an inner city school that was failing, I might be for vouchers, too." Even Bob Chase, president of America's largest teachers' organization, has written that there are many schools where he would not enroll his children.

In coming months, BAEO also will provide information about a wide range of efforts that expand parent options. These include: privately financed vouchers; tax-supported charter schools; educational tax credits and deductions for parents; states where students in areas without public schools get vouchers; parents who educate their children at home; school districts that use public-private partnerships to manage schools; and colleges, universities, and community organizations that provide supplementary educational opportunities for school-aged children.

baeo
Black Alliance for Educational Options

for more information go to: www.schoolchoiceinfo.org

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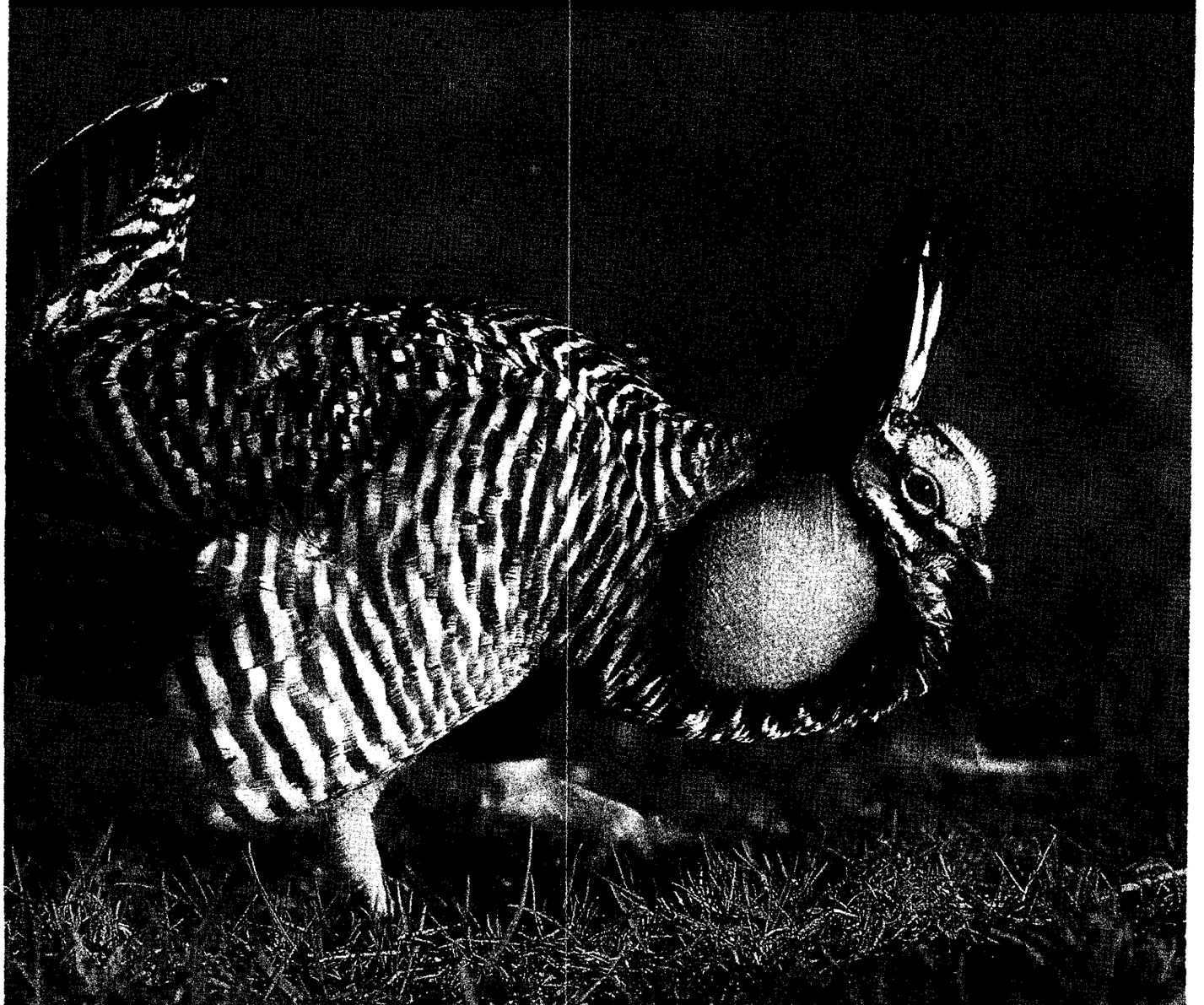

The Greater Prairie Chicken is one of several species to benefit from the latest conservation effort by Phillips Petroleum. Together with the National Fish and Wildlife Foundation, Phillips will help restore and manage 19,500 acres in northwestern Missouri, making it a safe haven for high-priority birds. Now breeding populations of Greater Prairie Chickens, Henslow's Sparrows and Bobolinks will have an improved chance of survival. And the finished project will become the first of many bird conservation areas to eventually span the country. It's just one more way Phillips works to improve our world and why we're known as The Performance Company.

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